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IN THE MATTER OF THE *POLICE SERVICES ACT*

AND IN THE MATTER OF SUPERINTENDENT K. MACDONALD

AND IN THE MATTER OF INSPECTOR A. JEVONS

DISCIPLINE HEARING

BEFORE THE PRESIDING OFFICER RETIRED HONOURABLE JUSTICE  
L.T. MONTGOMERY on **Friday, October 17, 2008**, at the Orillia  
GHQ, Orillia, Ontario.

APPEARANCES:

Mr. B. Gover)	For the OPP
Mr. O. Rees )	
Mr. J. Falconer)	For Superintendent MacDonald
Mr. S. Mathai )	and Inspector Jevons

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1 Friday, October 17, 2008 (10:08 a.m.)

2 THE ADJUDICATOR: Good morning, gentlemen.

3 MR. GOVER: Good morning.

4 MR. FALCONER: Good morning, Mr. Adjudicator.

5 Mr. Adjudicator?

6 THE ADJUDICATOR: Yes.

7 MR. FALCONER: I would like some assistance, if I  
8 can, to start the day. I have had some requests from the  
9 media for certain copies of exhibits. My practice has  
10 always been, to be honest with you, unless there is  
11 something over-ridingly adversarial about my client's  
12 interests with the media who have an interest in access to  
13 the court system, my practice has been that if I'm asked  
14 for a copy of a public exhibit that I can make it available  
15 to them if it's requested of me and it's not overly  
16 inconvenient to me and my clients.

17 Mr. Gover has raised an issue with me today that  
18 he feels that there should be some process or procedure  
19 that ought to govern it, and I would be happy to be  
20 governed by some direction on it if there is another way to  
21 give access to exhibits to the media. I'm talking about  
22 properly filed public exhibits that the media are  
23 requesting. I'm happy to be governed by however you would  
24 like to do it. I'm simply raising the issue because Mr.  
25 Gover has raised it with me, and I think as a matter of

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1 transparency, a public proceeding is a public proceeding,  
2 but I'm happy to use any kind of protocol that is useful to  
3 you.

4 THE ADJUDICATOR: So Mr. Gover, do you wish to...

5 MR. GOVER: I do, and I will be very brief on  
6 this issue, Mr. Adjudicator. I have provided the leading  
7 case on this subject to Mr. Falconer and it is the decision  
8 of the Supreme Court of Canada in Vickery and Prothonotary  
9 of the Nova Scotia Supreme Court. It's a decision from  
10 that court from, I believe, 1991, and this isn't a perfect  
11 copy. As you'll see, we have located this as quickly as we  
12 could, but I have flagged for you the portion of the head-  
13 note and then the portion of the actual decision that deals  
14 with this issue, and it, of course, stands for the  
15 proposition that the court, as custodian of exhibits, is  
16 bound to inquire into the use to be made of them and is  
17 fully entitled to regulate that use.

18 You will see that in what Chief Justice Lamer  
19 said for himself, for Justices Wilson, LaForest, Sopinka,  
20 Gonthier, and Stevenson in the head-note. And the point  
21 made is that such exhibits are frequently the property of  
22 non-parties and there is ordinarily a propriety interest in  
23 them, and clearly, the Court recognized the importance of  
24 freedom of the press and transparency and the desirability  
25 of making items available to the media, but suggests that

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1 it ought to be regulated by the court or tribunal. And my  
2 only point in relation to this is that it would be  
3 appropriate, in my submission, for you to know as the  
4 custodian of the many exhibits that have been filed, for  
5 you to know -- and to use the terms of this case -- to  
6 regulate access to exhibits and --

7           MR. FALCONER: I don't know if I can help. I  
8 mean, I don't have a problem with that. So I think that  
9 since we have a full day about evidence and Mr. Gover and I  
10 are agreed that if the court thinks there is a protocol and  
11 an appropriate way to do this, and frankly, if I don't have  
12 to be asked of materials, I'm happy to work with Mr. Gover  
13 on this. So I don't think we need to make a lot of legal  
14 argument. I don't think Mr. Gover is suggesting any kind  
15 of restriction or prohibition that would invoke somebody  
16 having to get counsel and come down here on a motion. I  
17 think the bottom line is we're all agreed that if there is  
18 a protocol the court would like to use, we would be happy  
19 to be governed by it.

20           MR. GOVER: Well, thank you. That will  
21 abbreviate my submissions. My submission is that this is a  
22 matter for you to regulate, and perhaps during a break Mr.  
23 Falconer could itemize what has been provided, and that may  
24 allay any concerns I have about what has transpired, and  
25 then on a going forward basis I propose that such issues be

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1 brought to your attention for determination as necessary.

2           MR. FALCONER: I would be happy to start sharing  
3 every step I've taken in the discharge of my brief if Mr.  
4 Gover would be happy to start opening his counsel book and  
5 tell me what steps he has taken in the last week in the  
6 furtherance of his brief. If we're to engage in  
7 transparency, I expect that Mr. Gover will tell me when he  
8 meets with the Commissioner, he will tell me what  
9 instructions he gets over the phone, even the ones he  
10 doesn't get by notes.

11           I mean, I get up and I agree to create a protocol  
12 with you, Your Honour, in order to do this properly. I  
13 don't have a problem with that, but when I agree to  
14 something, I really have a problem with it being used as  
15 leverage somehow to go and do other things. Now, what I  
16 suggest is that we agree on a protocol that will ensure  
17 that the media isn't something that either party, either  
18 the prosecution has to help out or I have to help out, and  
19 that if they want access to exhibits, they have the right  
20 person to speak to. That's all I'm suggesting, and I would  
21 like to get on with the evidence. We have a long day  
22 today.

23           MR. SEGLINS: Mr. Adjudicator, if I might, my  
24 name is Dave Seglins. I'm with the CBC. I yesterday asked  
25 Mr. Falconer for a copy of the Notice of Motion because it

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1 was difficult to understand the proceedings without it. I  
2 have covered these kinds of tribunals, particularly in  
3 Toronto. We have never had an issue. We have been able to  
4 go and ask for any exhibit tendered, including audiotapes,  
5 videotapes, that sort of thing. It has sort of been the  
6 open courts principle. I am just standing and rising to  
7 say that if there is any attempt to restrict it, or if you  
8 are considering that this is a case that requires some sort  
9 of restriction, I would just like to put on the record that  
10 we would like an opportunity to bring legal counsel to  
11 address that.

12 THE ADJUDICATOR: Thank you. Any further  
13 comments now from either counsel?

14 MR. GOVER: Not from me, thank you, sir.

15 THE ADJUDICATOR: I presume we have -- the  
16 Commissioner today is giving evidence, is that...

17 MR. GOVER: He is standing by in the hallway,  
18 sir.

19 THE ADJUDICATOR: All right. Both counsel have  
20 addressed the Court on this matter and Mr. David Seglins  
21 from the CBC has also made comments and is indicating that,  
22 if I understood him correctly, that if there is to be any  
23 restriction placed that he would like to have counsel  
24 present to address the Court. The court is -- this  
25 Tribunal is the custodian of these exhibits and there is

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1 nothing magic about the exhibits. They are public, they  
2 are here, they are filed in a tribunal environment.

3           Transparency has been a word that I have heard.  
4 Certainly, that is in a democracy, transparency is very  
5 important. The public have a right to know and they have a  
6 right to know what is going on in the tribunals and in the  
7 courts.

8           I have heard the word that the Tribunal has the  
9 right to regulate access to these exhibits. I quickly  
10 review in my mind the exhibits I have before me. They are  
11 substantial. The Vickery case that has been presented to  
12 me by Mr. Gover certainly is the leading authority from the  
13 Supreme Court of Canada. Both counsel, as I understand  
14 their comments, don't seem to have any problem with  
15 accessing the exhibits to the press.

16           I don't either. I don't think there is any  
17 reason why I should restrict it in any way and I don't see  
18 any reason why it should receive substantial regulation.  
19 They are there. They are public. The exhibits have been  
20 filed.

21           Now, I am not quite sure as to how the access is  
22 going to be accomplished. I know Mr. Falconer and Mr.  
23 Gover are fair and I'm sure they will assist in the  
24 provision of contents of the exhibits to the press. The  
25 Notice of Hearing has not been filed as an exhibit, if I

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1 understand.

2 MR. FALCONER: Yes, I noticed it yesterday and I  
3 think what has happened, we actually -- not I think, I know  
4 what has happened because we checked it out. What seems to  
5 have happened is it was filed before previous Adjudicator  
6 Tweedy, and then it was made the first exhibit, as I  
7 understood from Mr. Mathai, and it was the first exhibit  
8 but then it wasn't rolled over to your hearing, Mr.  
9 Adjudicator. So I think the obvious thing to do, even  
10 though I'm sure I just probably blew a great technical  
11 argument I had and now it's gone, but the obvious thing to  
12 do is to have that Notice of Hearing filed as an exhibit in  
13 this, and I would suggest that the particularization or the  
14 particulars provided by Mr. Gover be attached to that  
15 Notice of Hearing, and that would be one document.

16 THE ADJUDICATOR: So any problem there, Mr.  
17 Gover?

18 MR. GOVER: No, not at all. So to be clear,  
19 we're talking about the Notice of Hearing.

20 THE ADJUDICATOR: Yes.

21 MR. GOVER: And --

22 THE ADJUDICATOR: The particulars.

23 MR. GOVER: Yes, I'm content with that.

24 THE ADJUDICATOR: I think I have them before me.

25 MR. FALCONER: You do.  
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1 THE ADJUDICATOR: There is three Notice of  
2 Hearing and there is the particulars that were ordered by  
3 this Tribunal probably on June 24, if I remember correctly,  
4 '08. So they will be the next exhibit, the three Notice of  
5 Hearing and the particulars provided as directed by this  
6 Tribunal. So the next exhibit I think is 56.

7 EXHIBIT NO. 56: Three Notices of Hearing and  
8 Particulars.

9 THE ADJUDICATOR: David Seglins from the CBC  
10 indicated Notice of Hearing. I certainly have no problem  
11 with the press receiving a copy of the Notice of Hearing  
12 and the particulars that were ordered by this Tribunal. I  
13 think that would put the press fully in the picture. They  
14 would know exactly what the allegations are.

15 They would know what the particulars are. They  
16 can read the Notice of Hearing, and that might also help  
17 you to understand what is really going on here. So I think  
18 initially that's what we should do is provide the Notice of  
19 Hearing. Now, any suggestions how we're going to do that?  
20 I really don't know who the press are or how many are  
21 press.

22 MR. FALCONER: What occurred yesterday is I was  
23 approached on a couple of occasions, but the only document  
24 I distributed yesterday was the Notice of Motion that my  
25 client had filed because I was asked for it and it was an

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1 exhibit. If it's of assistance, as I understand it, I'm  
2 counting one, two, three representatives of the media. If  
3 they approach me about an exhibit and we're in a position  
4 to provide a copy of it to them, we will.

5           On the other hand, if the Professional Standards  
6 office isn't accessible to make a copy, then of course, it  
7 would have to be Mr. Gover that gets access to it, but I  
8 don't have a problem with furthering the transparency of  
9 the process. We have an exhibit binder. It's not an issue  
10 for us.

11           THE ADJUDICATOR: I'm going to lean on counsel to  
12 see that the press are provided with the Notice of Hearing.

13           MR. FALCONER: Fair enough.

14           MR. GOVER: That's fine. Thank you.

15           THE ADJUDICATOR: All right. Thank you. Now, do  
16 you want me to have a break while that takes place?

17           MR. FALCONER: Yes, I think that's appropriate.

18           THE ADJUDICATOR: It might be wise to have them  
19 in possession of that, or what do you say, Mr. Gover?

20           MR. GOVER: Well, it might be, but I do have the  
21 Commissioner standing by. We could arrange for copies to  
22 be made while we're sitting and take advantage of the time.

23           THE ADJUDICATOR: Yes, I think that's wise.

24           MR. FALCONER: That's fine.

25           THE ADJUDICATOR: Yes, all right.

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1 MR. GOVER: Perhaps if I might take them?

2 THE ADJUDICATOR: Yes.

3 MR. GOVER: And we'll take steps immediately,  
4 sir.

5 THE ADJUDICATOR: All right. Thank you. I want  
6 to thank the member from the CBC for bringing this to the  
7 Tribunal's attention. Thank you for your comments.

8 MR. SEGLINS: Well, thank you for addressing it  
9 so quickly.

10 THE ADJUDICATOR: Thank you. Now, we have an  
11 order excluding witnesses on this matter, save and except  
12 Superintendent Van Zant and Detective Sergeant Chalk and  
13 Officer Wyatt and Investigator Perry. So you are ready  
14 then to call your witness?

15 MR. GOVER: I am, and I understand that  
16 Commissioner Fantino will be joining us shortly, sir.

17 MR. FALCONER: Yes, prior to the Commissioner  
18 coming in there are two -- at least two evidentiary matters  
19 that I probably should address before he comes in for a  
20 moment. The first one is there was -- you've heard  
21 evidence about this and I believe the notes of  
22 Superintendent Van Zant have been filed.

23 On January 5th, 2008, there was a meeting between  
24 Commissioner Fantino and Superintendent Van Zant at a  
25 Kelsey's where a brown folder -- there was a meeting on  
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1 January 5th, 2008, where a brown folder in respect of Chief  
2 Superintendent Grodzinski was provided to Commissioner  
3 Fantino by Superintendent Van Zant. In view of the fact  
4 that that meeting has some evidentiary value, it seems to  
5 me that it would be appropriate to have Superintendent Van  
6 Zant sit out for that portion of the evidence. I'm trying  
7 -- I don't want to be overly difficult about it. If I flag  
8 it for my friend and he knows he's getting to there, how  
9 the meeting happened and how they ended up in a Kelsey's  
10 with a brown folder, then that would be great and then he  
11 will come back in when that's finished. I think that's the  
12 appropriate way to manage that.

13 MR. GOVER: And just by way of response,  
14 yesterday the transcript of Superintendent Van Zant's  
15 evidence was filed. We have his evidence in that respect,  
16 and in my submission, there is no need to enforce or alter  
17 the order excluding witnesses or to change the exemption.

18 MR. FALCONER: Well, just so we're clear, Mr.  
19 Adjudicator, I yesterday by way of disclosure for the first  
20 time was provided an E-mail, E-mail exchanges that led to  
21 that meeting. I may or may not have questions based on  
22 that new disclosure of the Commissioner about the meeting  
23 and I'm trying to really accommodate my friend and not be  
24 overly intrusive about my request. But surely, he can  
25 guide Superintendent Van Zant, who will no doubt welcome

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1 the break, around that evidence, nothing else. The other  
2 -- and that's because, of course, depending on what the  
3 Commissioner says about that meeting, it may be necessary  
4 to recall Superintendent Van Zant and I don't want him  
5 sitting in on the evidence of Commissioner Fantino about  
6 that meeting.

7           Let me give you an example. So far, we have an  
8 account from Superintendent Van Zant in his notes about the  
9 brown folder on Chief Superintendent Grodzinski that was  
10 given to Commissioner Fantino. It's our position that  
11 Chief Superintendent Grodzinski was the subject of  
12 reprisals by the Commissioner. It may well be that the  
13 Commissioner takes a different position about that brown  
14 folder and what happened. I don't want Superintendent Van  
15 Zant in the room when that different position gets taken.  
16 He may take the same position. I'm not suggesting he is  
17 going to. I just am trying to protect the process and my  
18 clients' entitlement to properly examine.

19           THE ADJUDICATOR: All right. I don't really  
20 think from my perspective this is a big issue. I think  
21 when I look at the overall picture, I hear from both  
22 counsel, I'm aware of the order that I have already made  
23 excluding witnesses, I think in the interest of caution and  
24 fairness I am going to have Superintendent Van Zant  
25 excluded when we get to that point in the examination in-

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1            A.    Good morning.

2            Q.    Now, I understand, sir, that you began your  
3 career in policing with what was then known as the  
4 Metropolitan Toronto Police Force?

5            A.    That's correct.

6            Q.    Is that correct, sir?

7            A.    Yes.

8            Q.    When was that?

9            A.    I began as an auxiliary police officer in  
10 1964 and then in 1969 I became a regular officer.

11           Q.    I understand, sir, that between 1969 and 1991  
12 you served in various areas of the Metropolitan Toronto  
13 Police Force; is that correct?

14           A.    That's correct.

15           Q.    Those areas included uniform patrol?

16           A.    Yes.

17           Q.    Undercover drug enforcement?

18           A.    Yes.

19           Q.    Detective branch?

20           A.    Yes.

21           Q.    Criminal intelligence?

22           A.    Yes.

23           Q.    Homicide squad?

24           A.    Yes.

25           Q.    And as a division commander; is that right,

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1 sir?

2            A. That's correct.

3            Q. And for our benefit, how many divisions are  
4 there or were there then in the Metropolitan Toronto Police  
5 Force?

6            A. Eighteen patrol divisions and there were at  
7 that time five traffic divisions plus various other  
8 branches, investigative services, and so forth.

9            Q. As a division commander, what was your rank?

10           A. Superintendent, and I also looked after field  
11 operations which would have been 68 per cent of the total  
12 operating budget of the Toronto Police Service dedicated to  
13 front line service delivery.

14           Q. Now, Commissioner, I understand that you were  
15 Chief of the London Police Service from November 4th, 1991,  
16 to August 3rd, 1998, a period of almost seven years; is  
17 that correct?

18           A. That's correct.

19           Q. And I understand that during that period, and  
20 specifically, in 1992, the City of London became larger by  
21 annexing neighbouring townships; is that correct?

22           A. Yes.

23           Q. And in effect, the geographic size of London,  
24 Ontario, was tripled?

25           A. That's correct.

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1            Q.    And then I take it that had ramifications for  
2 policing?

3            A.    It did, indeed.

4            Q.    Can you describe those, please?

5            A.    Well, we ended up assuming quite a bit of new  
6 territory that was previously policed by the Ontario  
7 Provisional Police. So there was a transition of services,  
8 including communications and patrol areas and other  
9 resources that we had to find within the London Police, per  
10 se, and as well, the whole coordination of liaising with  
11 local councils and those kind of issues.

12           Q.    Now, Commissioner, between August 4th, 1998,  
13 and March 5th, 2000, you were Chief of the York Regional  
14 Police Service; is that correct?

15           A.    That's correct.

16           Q.    And the York Regional Police Service, then,  
17 was comprised of approximately how many officers, sir?

18           A.    I believe at that time we were in the area of  
19 1,000 officers.

20           Q.    And then you became Chief of what is now  
21 known and was by then known as the Toronto Police Service  
22 on March 6th, 2000; is that correct, sir?

23           A.    That's correct.

24           Q.    And the Toronto Police Service employs over  
25 5,200 officers?

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1            A.    Yes.

2            Q.    Over 2,000 civilian staff; is that right,  
3 sir?

4            A.    That's correct.

5            Q.    Am I correct that Toronto has one of the  
6 largest municipal police services in North America?

7            A.    Yes, I believe it's the fifth largest in  
8 North America.

9            Q.    Now, sir, you became Commissioner of  
10 Emergency Management for the province of Ontario on March  
11 1st, 2005; is that correct?

12           A.    It is.

13           Q.    Can you tell us what your duties entailed as  
14 Commissioner of Emergency Management for the Province of  
15 Ontario?

16           A.    It was putting in place policies and  
17 procedures dealing with emergencies within the province,  
18 dealing with actual emergencies as they in fact happened  
19 ongoing, providing advice and counsel to the Cabinet and  
20 the Premier on related issues, and also putting in place  
21 the provincial response to emergencies, which required by  
22 legislation the resources be put in place in some 444  
23 municipalities in the province the appropriate resources  
24 and expertise to deal with emergencies, and also, having  
25 the various ministries of the government ensure that they,







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1            Q.    The Commander of the Order of Merit to the  
2 Republic of Italy Award in 2000?

3            A.    Yes.

4            Q.    The Order of St. John?

5            A.    Yes.

6            Q.    The Queen's Golden Jubilee Medal?

7            A.    Yes.

8            Q.    Can you tell us what that connotes, being the  
9 recipient of the Queen's Golden Jubilee Medal?

10           A.    Well, it's a Queen medal commission to  
11 celebrate the 125th establishment of Confederation.

12           Q.    You have also received the Police 30 Year  
13 Exemplary Service Medal and Bar?

14           A.    Yes, sir.

15           Q.    You've received the Canada 125th  
16 Commemorative Medal?

17           A.    Yes.

18           Q.    The Rotary International Paul Harris Fellow  
19 Award?

20           A.    That's correct.

21           Q.    The Commander of the Order of Merit of the  
22 Police Forces in 2003?

23           A.    That's correct.

24           Q.    What organization confers that distinction,  
25 sir?















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1            A.    You have.

2            Q.    And then you responded, apparently, at 12:34  
3 p.m. the same day; is that correct?

4            A.    That's correct.

5            Q.    And you report there about steps that you had  
6 taken; is that right, sir?

7            A.    That's correct.

8            Q.    Can you explain what you did?

9            A.    Well, based on what I saw and identified to  
10 be mis-communication and also a certain amount of mischief-  
11 making happening to discredit the very legitimate and very  
12 necessary move we were making, I thought it was important  
13 for me to reach out to Mayor Morrison, mayor of the day,  
14 and speak with her about these issues. And it was on the  
15 basis of that conversation that I then decided that I  
16 would, as well as Deputy Commissioner Lewis, Chief  
17 Superintendent Smith, and Chief Superintendent Grodzinski,  
18 as well as Inspector Karski who was the then -- and still  
19 is -- detachment commander, we would go and meet with the  
20 council.

21            Q.    Now, again by reference, Commissioner, to  
22 Exhibit 21, we have a further E-mail from you, sir, and  
23 this is the same date, February 21st, 2007, 2:53 p.m. and  
24 this says Chris et al, and it's addressed to Interim Deputy  
25 Commissioner Lewis with copies to John Carson, who is the





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1            A.    It is.

2            Q.    And the recipients of the E-mail who were  
3 copied in that E-mail to you were Deputy Commissioner  
4 Carson, Chief Superintendent Smith, Superintendent Laing,  
5 Inspector Karski, Superintendent Howe; is that correct,  
6 sir?

7            A.    It is.

8            Q.    And in your response where you at 12:34 p.m.  
9 reported on speaking to Mayor Morrison, the recipients in  
10 the "cc" line came to include one more person; is that  
11 correct, sir?

12           A.    That's correct.

13           Q.    And that was Chief Superintendent Grodzinski?

14           A.    Yes.

15           Q.    And then in your E-mail to Chris et al that  
16 we've just covered which was at 2:53 p.m. on that date, we  
17 have the further name added to the "cc" line of  
18 Superintendent MacDonald; is that correct, sir?

19           A.    That's correct, yes.

20           Q.    And that leads to the question, then,  
21 Commissioner, why did you include Superintendent MacDonald  
22 on this E-mail when he was not on the distribution list  
23 from Deputy Lewis or your previous reply to Deputy Lewis'  
24 E-mail?

25           A.    Because by inference and by name his name





















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1            thought it was a one-off, to be honest, I would  
2            have stayed sitting down. My concern is that  
3            this may be how this witness thinks it's  
4            appropriate to speak about other witnesses. So  
5            we can either ignore it and hope it was a one-  
6            off. I have expressed my concern. If it's not a  
7            one-off and it's repeated, this kind of approach,  
8            then I expect Mr. Gover will do something with  
9            his witness. That's my concern. I'll leave it  
10           at that.

11           THE ADJUDICATOR: I don't think I'm going to make  
12           comments. I think both counsel have put me in  
13           the picture on this matter and I don't want to  
14           get involved in this situation, not because I'm  
15           dodging it, but I think you will find with your  
16           comments made and you both have certain cautions  
17           in respect to the manner you put the questions to  
18           the Commissioner. So I'm going to allow the  
19           matter to continue but I have it in my mind, and  
20           as Mr. Gover has indicated, I will put value  
21           where I see value. So the Commissioner will  
22           return.

23           MR. GOVER: Thank you very much, sir, and we have  
24           duplicated the Notice of Hearing -- Notices of  
25           Hearing and Particulars, sir. We're returning







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1 them, but I know Deputy Commissioner Lewis mentioned to me  
2 that Bill Grodzinski had served in his career as an OPP  
3 officer in the Northeast Region, that he was familiar with  
4 the area policing issues, he would be a good fit, and that  
5 he had not only the skill set but certainly the capacity  
6 and the established relationships in the community which go  
7 back to his time there. And then it was brought to my  
8 attention that his wife is from North Bay or was, I guess,  
9 that she has family there, and it was made out to be an  
10 excellent fit. And I said, great, if that works, let's do  
11 it, believing all the time in actual fact that we were  
12 bringing Bill Grodzinski back home and his family. So that  
13 was -- that was my sign-off on that decision.

14            Q. Now, whose decision ultimately was it not to  
15 send him to North Bay?

16            A. It was mine. After the decision was made to  
17 transfer Bill Grodzinski to North Bay, I became aware that  
18 there were some issues with regards to him not wanting to  
19 go there, and then that didn't really get my attention all  
20 that much, because when one joins the Ontario Provincial  
21 Police, one joins the police anywhere in the province.  
22 That's the deal. So I wanted to know, well, what is the  
23 justification for that, and I was then made aware that his  
24 wife had some health issues, that it would create a  
25 hardship, and I said, well, you know what, I said we're not

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1 going to impact his family, so let's find another solution  
2 and that was it. And I then said we'll leave Bill where he  
3 is and we'll move on and find some other solution and that  
4 was it. It was that simple.

5            Q. Now, it may be suggested that the timing of  
6 this proposed transfer had something to do with the fact  
7 that he had by then been identified as a defence witness.

8            A. I have learned a long, long time ago that you  
9 separate any of those side-bar issues with the greater good  
10 and do the right thing. To me, the legitimate right thing  
11 to do was to deal with organizational issues, the fact that  
12 we had a very important vacant position that needed to be  
13 filled. And you know, I also thought that this would be a  
14 career enhancement position for Bill or any other person  
15 that has the opportunity, if you will, to move around in  
16 the organization, to experience different responsibilities  
17 and different commands.

18           Q. Let's dwell on that for a moment. First of  
19 all, as the Commissioner of the Ontario Provincial Police,  
20 what size budget do you manage?

21           A. In the area of \$800 million.

22           Q. And how many total officers are under your  
23 command?

24           A. Well, I think we're approaching 6,000 right  
25 now.















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1            witnesses. Superintendent Van Zant, Detective  
2            Sergeant Chalk, Officer Wyatt, and Investigator  
3            Perry is exempted from an order excluding. So  
4            you may proceed, Mr. Gover.

5            MR. GOVER: Thank you very much, Mr. Adjudicator.

6 BY MR. GOVER:

7            Q. Commissioner Fantino, I am now turning to the  
8 charges against the subject officers, but actually, we need  
9 to discuss the investigation that led to those charges  
10 first, and when did you first become aware of the fact that  
11 there was an investigation into the conduct of  
12 Superintendent MacDonald and Inspector Jevons?

13            A. I believe it was within a relatively short  
14 time of me arriving here I was made aware of some  
15 complaints and things of that nature, but specifically, I  
16 don't have a date for you.

17            Q. Are you able to tell us the means by which  
18 you became aware of that investigation?

19            A. It was one of the briefings that had been  
20 provided to me. I know that some of these discussions had  
21 come up from then Deputy Commissioner Carson, but  
22 specifically, I can't tell you what period of time that  
23 was.

24            Q. Now, apart from that investigation, did you  
25 receive any information about the Professional Standards

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1 Bureau?

2            A. Well, there was a number of issues that had  
3 come to my attention with regards to the Professional  
4 Standards Bureau, principally, the lack of jurisdiction on  
5 a number of cases.

6            Q. Can you explain that, please?

7            A. Well, as you are aware, the *Police Services*  
8 *Act* requires that matters that come to the attention of the  
9 police service that require an investigation and then  
10 result in *Police Act* charges and the service of those  
11 documents need to be done within six months. There are  
12 exceptions, and those exceptions have to be justified and  
13 dealt with. In my career, I've dealt with many of those,  
14 albeit, not in the same capacity as I do here as OPP  
15 Commissioner.

16            Q. Fair enough. So this loss of jurisdiction  
17 issue, can you tell us a bit more about how it was brought  
18 to your attention?

19            A. Well, a couple of the adjudicators that we  
20 had used in police matters or that had been used in police  
21 matters by the OPP had brought that issue to my attention,  
22 which caused me to then do a bit of a review, and in fact,  
23 there was what I thought to be an inordinate number of loss  
24 of jurisdictions inherent to the work and the progress and  
25 the timeliness of investigations in the unit.





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1            A.    That's correct, yes.

2            Q.    And in addition, we have a Notice of Hearing  
3 bearing the same date, March 15th, 2007, charging Inspector  
4 Jevons with deceit; is that correct?

5            A.    That's correct.

6            Q.    And once again, sir, that appears to bear  
7 your signature?

8            A.    Yes.

9            Q.    And it appears to bear your initials on the  
10 second page which set out particulars?

11           A.    That's correct.

12           Q.    And finally, we have another Notice of  
13 hearing which is part of Exhibit 56 charging Inspector  
14 Jevons with neglect of duty and also dated March 15, 2007,  
15 and signed by you; is that correct?

16           A.    That's correct, yes.

17           Q.    Commissioner Fantino, why did you sign those  
18 charge sheets or Notices of Hearing?

19           A.    I felt that the investigation surfaced  
20 grounds for which the matter should be put before a  
21 Tribunal to be dealt with the allegations of misconduct as  
22 reflected in the charges.

23           Q.    And in your view, sir, were these charges  
24 serious or not serious in nature?

25           A.    Well, to put things in perspective, any time













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1           that's the approach I'm to take, instead of doing  
2           a job for my clients, what I end up doing is  
3           engaging in some personal rhetoric and personal  
4           exercise with a witness that's unseemly and not  
5           helpful to you. But at the same time, what I'm  
6           not going to do is allow my clients' interest,  
7           their reputation, their careers, to somehow be  
8           rolled up in some personal agenda the  
9           Commissioner has.

10           So he has to be cautioned, with respect. I  
11           understand that you just cut him off and I get  
12           that, Mr. Adjudicator, and frankly, I appreciate  
13           it. After you cut him off, I said not a word,  
14           and what is the next words out of -- his  
15           questioner brings him right back to it. Right?  
16           His questioner brings him back to it, and what do  
17           we hear, I'm dishonest. Well, that's it. In my  
18           mind, it's now time to speak to the man and  
19           explain what is appropriate and seemly and what  
20           is unseemly. I apologize for seeming to be  
21           telling you how to do your job, Mr. Adjudicator.  
22           THE ADJUDICATOR: Do you not think that I can  
23           deal with this by submissions made to me by both  
24           counsel, and then when I sit down, I've got all  
25           this evidence in front of me, and you must be







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1 quite a number.

2            Q.    What do you mean by "far too many", sir?

3            A.    Well, any time these things happen, it's  
4 always a bit of a hardship to deal with and it's difficult.

5 As I said earlier, it affects family, it affects the  
6 individual, it affects people's reputations and it's  
7 something that I've never taken lightly. It affects  
8 organizations and our profession. It's a serious issue.

9            Q.    Now, prior to this case, had you ever had  
10 occasion to authorize *Police Services Act* charges against  
11 commissioned officers?

12           A.    Not that I can recall.

13           Q.    And coming back to your experience in the  
14 other jurisdictions where you've led police services, sir,  
15 London, York Region, and Toronto, how does the initiation  
16 of these proceedings compare with the initiation of  
17 proceedings there under your leadership?

18           A.    Very similar. Complaints come in,  
19 allegations are made, investigations are conducted, and on  
20 the basis of those findings decisions are made as to what  
21 disposition is to be rendered.

22           Q.    Now, I guess, Commissioner, as someone who  
23 has been a Chief of Police in three municipalities as well  
24 as the Commissioner of the Ontario Provincial Police, you  
25 have a bit of experience in dealing with police





















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1            page dated November 22, 2006 with business card  
2            attached, and note of July 19, 2007.

3            MR. GOVER:    And --

4            MR. FALCONER:  Mr. Adjudicator, could the witness  
5            be asked to sit outside for a moment?  I see Mr.  
6            Gover is about to ask a question that I have a  
7            concern about.

8            THE ADJUDICATOR:  So Commissioner --

9            THE WITNESS:    I know the routine, Your Honour.

10          THE ADJUDICATOR:  Thank you.  About time.

11 ---    Witness leaves hearing room at 12:37 p.m.

12          MR. FALCONER:  The reason I rose preemptively was  
13          because once, in my opinion, the train left the  
14          station with the document being shown to the  
15          witness, I would have little recourse.  That's  
16          why I interrupted so early.  I saw the document  
17          in Mr. Gover's hand.  There were two answers  
18          given by the witness when the witness was asked  
19          in examination in-chief whether he reviewed  
20          anything.  Answer number one was, well, I heard  
21          that the subject officers had put something in,  
22          didn't agree -- I heard they didn't agree.

23                    He was asked did you review anything and he  
24                    said, well, I heard they didn't agree.  Then he  
25                    was asked again, and obviously, in a leading

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1            fashion almost begging for the right answer,  
2            well, did you see submissions by the subject  
3            officers. Right? Now he's completely leading  
4            and the Commissioner does not help him, he says  
5            no, not that I recall.

6            Now, when you take the combination of those  
7            two answers, answer one is I heard about  
8            something, and answer two, no, not that I recall,  
9            I do not believe that in examination in-chief my  
10           friend is allowed to now challenge the witness'  
11           evidence by showing him our submissions and  
12           saying, well, didn't you read these. The obvious  
13           answer he's going to elicit is a different answer  
14           now, oh, yes, of course, I read it. My  
15           submission is the evidence stands on its own,  
16           which is he didn't read them, and he's not  
17           allowed to cross-examine his client on the point,  
18           and by the way, it's completely consistent with  
19           the evidence he gave about the April 18th note,  
20           which is as of April 18th he decided that  
21           extension was being given.

22           THE ADJUDICATOR: So Mr. Gover, where are you  
23           going?

24           MR. GOVER: Mr. Adjudicator, I have in my hand  
25           Exhibit 45 in these proceedings and you might













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1           and a half and then we'll put it over to the next  
2           day. I suggest we put a whole day aside the next  
3           day, but I can tell you, Mr. Adjudicator, my  
4           intention is to honour the half day to a day I  
5           needed for the Commissioner, and I will honour  
6           that.

7           THE ADJUDICATOR: Well, I don't expect Mr. Gover  
8           wants to say too much about Mr. Falconer breaking  
9           up, if I can use that word, his cross-  
10          examination. I think that's something he has a  
11          right to do if he wants, in any event.

12          MR. GOVER: It is. I, of course, would like to  
13          make the best use of the time available today.

14          THE ADJUDICATOR: Yes.

15          MR. GOVER: And to ensure that that happens, I  
16          have canvassed the Commissioner's availability  
17          for November 10th. He is not available then, and  
18          the only discussion I've had with the  
19          Commissioner about continuing, given his  
20          calendar, he actually suggested something that I  
21          know will have Mr. Falconer on his feet.

22          THE ADJUDICATOR: Maybe me, too.

23          MR. GOVER: And maybe you, too, but that was  
24          tomorrow which is a Saturday, and I appreciate  
25          the potential difficulties, but November 10th is

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1 not a date on which the Commissioner is  
2 available. He, of course, wishes to conclude his  
3 evidence in an efficient and timely way, and is  
4 of course extremely busy. So those are some of  
5 the issues that we have. I will canvass other  
6 dates with him and with Mr. Falconer, but you  
7 appreciate there is some difficulty here, and  
8 this issue of the Commissioner's availability is  
9 something that we have addressed from time to  
10 time during the abuse of process motion when it  
11 appeared that he may well be a witness.

12 MR. FALCONER: My children own me tomorrow, so  
13 that's out of the question. There is --

14 THE ADJUDICATOR: No, there is no way that we're  
15 going to sit tomorrow. We've worked hard this  
16 week. Wasn't that 7:30 last night?

17 MR. FALCONER: It was.

18 THE ADJUDICATOR: So I don't think anyone can  
19 criticize us for not working on this matter. So  
20 maybe we can -- I'm not going to obviously force  
21 the matter on the 10th, so maybe another date.  
22 Like I would like to deal with this matter this  
23 year, you know what I mean?

24 MR. FALCONER: Absolutely.

25 THE ADJUDICATOR: Like submissions and my



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1 time that wasn't free or allowing Mr. Rees to sit  
2 in for that portion because it's only cross-  
3 examination. I know it's not ideal. I never  
4 meant to suggest it is, but frankly, it has been  
5 visited a little bit on me, not the opposite.

6 MR. GOVER: And I really want to go to lunch  
7 shortly, Mr. Adjudicator. I am scheduled to  
8 start a civil trial Monday morning that is meant  
9 to go three or four weeks. These cases have been  
10 known to settle at the courtroom door and one of  
11 the alternatives I put to Mr. Falconer is that if  
12 we can't agree on a date, that we reconvene by  
13 tele-conference early next week in the event that  
14 it does settle, in which case, I would have  
15 availability, but then be in the position of  
16 canvassing other dates with the Commissioner that  
17 may well be earlier. That's the only other  
18 suggestion that I have.

19 THE ADJUDICATOR: So I know you've talked to the  
20 Commissioner. Has the Commissioner indicated  
21 that it's just impossible for him to do anything  
22 on the 10th?

23 MR. GOVER: He will not be in the country, I  
24 understand.

25 THE ADJUDICATOR: All right. Like as I

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1 indicated, I want to finish this this year  
2 because I may not even be in this country after  
3 the end of the year. So I don't want to go away  
4 and leave this thing hanging. So if you can't  
5 work out the scheduling somewhere, I will  
6 probably force scheduling on you because we're  
7 going to finish this before Christmas.

8 MR. GOVER: Yes, absolutely, sir.

9 THE ADJUDICATOR: So either one way or the other.

10 MR. FALCONER: I would like November 10th to be  
11 the back-stop. In other words, what I'm asking  
12 is since Mr. Gover and I are available, first of  
13 all, can he please canvass with the Commissioner  
14 what the exact reason is.

15 THE ADJUDICATOR: I know he will. I mean, I'm  
16 not going to beat this any more. Counsel are  
17 realistic and they are men of integrity, so I'm  
18 not going to revisit that over and over. So  
19 we're going to come back at 2:00 o'clock, and as  
20 far as breaking up your cross-examination, Mr.  
21 Falconer, as far as I'm concerned, it's entirely  
22 up to you. I don't care how I receive it. I'll  
23 put it together.

24 MR. FALCONER: Thank you.

25 THE ADJUDICATOR: All right.









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1 saying anything further but I'm upset and I'm not  
2 putting anything further on the record, getting  
3 close to professional conduct. Now, I'm going to  
4 have the Commissioner return and you move on to  
5 another subject. You understand?

6 MR. GOVER: I certainly do, sir.

7 THE ADJUDICATOR: All right. Mr. Falconer, do  
8 you wish to say anything?

9 MR. FALCONER: No, Mr. Adjudicator.

10 THE ADJUDICATOR: Thank you.

11 MR. FALCONER: Actually, I do. Mr. Adjudicator,  
12 in my dealings with Mr. Gover over the course of  
13 this hearing I have never once seen anything by  
14 him that I would term unethical or improper, and  
15 if Mr. Gover tells you that he had no  
16 communication with the witness, then I accept him  
17 at his word. That doesn't mean communications  
18 weren't had with the witness. I'm simply saying  
19 it wouldn't have been at Mr. Gover's instance or  
20 encouragement or Mr. Rees' instance or  
21 encouragement. I simply don't believe it. I  
22 simply put that on the record because that's not  
23 my experience with these two gentlemen.

24 THE ADJUDICATOR: And Mr. Falconer, I agree with  
25 you 100 per cent. I'm not pointing my finger at







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1 A. Yes.

2 Q. And what I'm showing you now, sir, and I've  
3 provided a copy to Mr. Falconer and to the Adjudicator,  
4 what I'm showing you now is dated June 12th, 2007 and it's  
5 on the letterhead of the Commissioner of the Ontario  
6 Provincial Police. Can you tell us what this is, sir?

7 A. Yes, this is correspondence directed to  
8 Falconer, Charney LLP to the attention of Mr. Falconer,  
9 "...Dear Mr. Falconer, I'm in receipt of your  
10 correspondence dated 29 May, 2007 where you make  
11 application for legal indemnification on behalf of  
12 Superintendent Ken MacDonald and Inspector Alison  
13 Jevons. After careful review and consideration of  
14 your request, legal indemnification will not be  
15 approved. Thank you. Yours truly, J. Fantino..."

16 MR. GOVER: I would ask that that be made the  
17 next exhibit, please, Mr. Adjudicator.

18 THE ADJUDICATOR: So Exhibit 58, Mr. Falconer?

19 MR. FALCONER: No objection.

20 THE ADJUDICATOR: Like the other document we were  
21 talking about, is it going to be an exhibit?

22 MR. GOVER: It is not an exhibit. I don't object  
23 to it being made an exhibit, coupled with the  
24 evidence of the Commissioner on the subject. You  
25 will recall that --

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1 MR. FALCONER: Just to interrupt, I'm sorry, just  
2 to go backwards one step for the record, the  
3 document that my friend just tendered as Exhibit  
4 58 --

5 THE ADJUDICATOR: Yes.

6 MR. FALCONER: -- is already an exhibit. It's  
7 Exhibit 38.

8 THE ADJUDICATOR: 38.

9 MR. FALCONER: 38, so we'll want to go over and  
10 see from our records.

11 MR. GOVER: There it is, and thank you for that.  
12 So we don't need to mark this as Exhibit 58,  
13 then.

14 THE ADJUDICATOR: Very good. Thank you, Mr.  
15 Falconer.

16 MR. FALCONER: Of course, it's Mr. Mathai that  
17 picked up on it.

18 THE ADJUDICATOR: I knew that. So the other  
19 matter, Mr. Falconer, any problem with putting  
20 that in as an exhibit? It might help me.

21 MR. FALCONER: No, that's fine. I have no  
22 objection.

23 THE ADJUDICATOR: So that would be 58 then?

24 MR. GOVER: It would be 58, yes, sir.

25 THE ADJUDICATOR: All right. That's 58. That's

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1 the notes from Chief Superintendent Armstrong, is  
2 that?

3 MR. FALCONER: Yes, and could I suggest  
4 something? Since it seems to simply be another  
5 note by the same officer, perhaps we should just  
6 append it to the package of Armstrong notes we  
7 just dealt with.

8 MR. GOVER: The former Exhibit J, that makes  
9 sense to me.

10 THE ADJUDICATOR: All right.

11 MR. GOVER: And it might give me time to locate a  
12 copy to file with you.

13 THE ADJUDICATOR: So that will be attached o  
14 Exhibit 57, which was "J".

15 MR. GOVER: Thank you, sir, and I'm providing it  
16 to you now.

17 THE ADJUDICATOR: You don't have a stapler, do  
18 you?

19 MR. GOVER: No.

20 THE ADJUDICATOR: Maybe Mr. -- well, there you  
21 are, Mr. Mathai has got a stapler. Thanks, Mr.  
22 Gover.

23 MR. GOVER: Thank you.

24 BY MR. GOVER:

25 Q. Now, I would like to return to what is, in











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1           A. I have recollection of such a discussion as  
2 it relates to the general conduct, demeanour, and  
3 proceedings in the hearing room. There was issues about  
4 that kind of situation. I discussed that with  
5 Superintendent MacDonald and I was in favour of, if you  
6 will, the rules of engagement to be defined so as we could  
7 deal with the decorum, if you will, within these *Police*  
8 *Services Act* tribunals.

9           Q. And it continues at the bottom of the page,  
10       "...Further, in reviewing the initial mischief  
11 incident, Commissioner Fantino agreed to consider a  
12 draft proposal prepared by Inspector Jevons in  
13 consultation with three other major police services on  
14 how police should respond to domestic violence  
15 occurrences involving police families..."

16          A. Yes, that I recall that, as well, and in fact  
17 I met with Inspector Jevons at some later point in time  
18 where she delivered to me a document setting out a number  
19 of issues, suggestions, and so forth with regards to  
20 matters how the police should respond to domestic violence  
21 occurrences involving police families, and she did deliver  
22 that to me, yes.

23          Q. And it states in the final paragraph,  
24       "...Although I have been transferred as of 01 January  
25 2007 to the OPP Highway Safety Division in Aurora,

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1 please do not hesitate to contact me if you have any  
2 further concerns in reference to your file..."

3 Is that correct, sir?

4 A. Yes, that's correct.

5 Q. Now, what is your understanding of when  
6 Superintendent MacDonald took up duties at the Highway  
7 Safety Division?

8 A. I think he was -- as I recall, he was going  
9 through a familiarization process prior to arriving  
10 officially and formally, if you will, on the 1st of  
11 January. My understanding was that by the end of the year  
12 he was effectively gone from the Professional Standards  
13 Bureau.

14 Q. And when you say "by the end of the year",  
15 sir, what do you mean?

16 A. The end of December, '06.

17 Q. And now some of the remaining issues,  
18 Commissioner, and I'm going to show you paragraph 2 of the  
19 Fresh as Amended Notice of Motion which is dated July 8th,  
20 2008 and I'm going to draw your attention specifically to  
21 the last sentence in paragraph 2. This is on page two and,  
22 Commissioner, the statement here reads:

23 "...There are grounds to believe that these  
24 proceedings have been initiated as a reprisal for the  
25 manner in which Superintendent MacDonald executed his

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1 duties with respect to prosecutions conducted in or  
2 around 2005..."

3 I'll ask you this question directly, sir. Do you have any  
4 information to indicate that there are such grounds?

5 A. Absolutely none.

6 Q. Do you bear any personal animus towards  
7 Superintendent MacDonald?

8 A. Absolutely none.

9 Q. How would you describe your relationship, if  
10 any, with Superintendent MacDonald?

11 A. It always has been professional both ways,  
12 cordial, respectful mutually, absolutely no problem.

13 Q. Did you ever discuss with him his transfer  
14 from Professional Standards Bureau to Highway Safety  
15 Division?

16 A. Yes, I did.

17 Q. Can you tell us about that, please?

18 A. It was at the -- at the Professional  
19 Standards Bureau Christmas get-together in Niagara Falls  
20 and I sat down with Superintendent MacDonald, spent quite a  
21 bit of time with him explaining as best as I could the  
22 reasons for the transfer, encouraging him to move on and  
23 not be deterred from doing a good job, which I felt he  
24 would be able to do in a new environment, turning the  
25 corner on some of these issues, and I also felt that he

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1 needed a new lease on his career to be divested of so many  
2 of these issues.

3 Q. Can you elaborate on that, please?

4 A. Well, it was obvious to me that there was  
5 issues that needed to be resolved not only with these  
6 allegations but also with the operation of the Professional  
7 Standards Bureau generally and I needed to make some  
8 changes. I felt that I needed to make some changes based  
9 on the information and my own awareness of the issues at  
10 that time, and it was pointless to continue with the same  
11 situation, the same staffing, the same leadership in the  
12 unit because I felt that we would just continue the same  
13 conflict and difficulties and we needed to find a more  
14 efficient, more effective way of leading the unit in  
15 dealing with these issues.

16 Q. Now, Commissioner, it has been suggested that  
17 you bear some animus toward Superintendent MacDonald  
18 because he did not support your appointment as  
19 Commissioner.

20 A. Well, you know, that has absolutely no  
21 relevance in me being appointed the Commissioner. My  
22 commissioning, this particular job, comes from an Order in  
23 Council and I don't know what Superintendent MacDonald,  
24 even if I knew about it -- and I don't, by the way -- I  
25 don't know what influence he would have had on anything

1 anyway and I don't know that he opposed it. It's kind of  
2 news to me.

3 Q. Sir, do you have any personal animus towards  
4 Inspector Jevons?

5 A. Absolutely none.

6 Q. Now --

7 A. If I may add, you know, if in fact I did, I  
8 certainly wouldn't have allowed her to go off on a  
9 secondment to Emergency Management Ontario which I know is  
10 a place I came from, I know the prestige of that, I know  
11 what a high profile job it is, the exposure to government  
12 and the inner workings of government. I wouldn't have  
13 allowed that. I would have sent someone else.

14 Q. And in fact, how much knowledge do you have  
15 of Inspector Jevons in particular?

16 A. Not a whole lot, other than I assume that she  
17 is a good person, capable, competent. I wouldn't have sent  
18 her down there to be seconded to that particular ministry  
19 responsibility if I didn't think that it would be good for  
20 her, as well, and as with Superintendent MacDonald, a bit  
21 of a new lease on life, trying to help these people.

22 Q. And the final area that I'm going to canvass  
23 with you, Commissioner Fantino, is raised by paragraph 2 of  
24 the Fresh as Amended Notice of Motion, and we've covered  
25 the last sentence in the paragraph but I'm going to focus

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1 on what precedes it.

2 "...This complaint was initiated by the Ontario  
3 Provincial Police Association President, OPPA, Karl  
4 Walsh, as a form of reprisal against senior members of  
5 the Professional Standards Bureau, PSB, in charge of  
6 investigations and possible prosecution of OPPA  
7 members..."

8 Now, perhaps I'll pause there, sir. You do understand that  
9 the complaint was initiated by the Ontario Provincial  
10 Police?

11 A. Yes, but the genesis of the complaint goes  
12 back historically to the beginning of the whole incident  
13 that resulted in Ms. Cole complaining to the Ontario  
14 Civilian Commission on Policing, so I don't know where this  
15 Karl Walsh thing comes in.

16 Q. Right. Let me continue, then, to what it  
17 says in the next paragraph,

18 "...Currently, there are no protections from reprisals  
19 against commissioned officers for their conduct in  
20 furtherance of PSB investigations and prosecutions..."

21 A. That's not true. Everyone is entitled to due  
22 diligence. The protection is there, be it in the *Police*  
23 *Services Act*. There is always relief. For instance, there  
24 is no escape from accountability in our world. There is no  
25 escape from the laws of the land and the rules of

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1 engagement, if you will, and I don't know how we would ever  
2 consider that there would be no protection for reprisals  
3 because there is working agreements in place. There is all  
4 kinds of appeal mechanisms, complaint mechanisms that  
5 people can exercise, relief up to the courts, and  
6 associations, if we are inferring that this is a reprisal  
7 by the OPPA, the OPPA, too, is accountable with regards to  
8 their conduct.

9            MR. GOVER: Thank you very much, Commissioner.  
10            Those are my questions.

11            THE ADJUDICATOR: Thank you. So Mr. Gover [sic]  
12            do you want to start now or do you want a little  
13            break?

14            MR. FALCONER: I think you meant Mr. Falconer.

15            THE ADJUDICATOR: I did mean Mr. Falconer. I'm  
16            used to seeing Mr. Gover on his feet so much.

17            MR. FALCONER: I'm content to start right now.

18            THE ADJUDICATOR: All right. So cross-examine.

19

20 CROSS-EXAMINATION BY MR. FALCONER:

21            Q. Good afternoon, Commissioner Fantino.

22            A. Good afternoon, Mr. Falconer.

23            Q. Commissioner Fantino, you made reference to  
24 accountability and that everybody is accountable; correct?

25            A. Yes, sir.

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1 Q. You authored a book entitled "Duty: The Life  
2 of a Cop"; is that right?

3 A. Yes, along with someone else.

4 Q. A Mr. Jerry Amernic?

5 A. Amernic, yes.

6 Q. There is just a brief passage I wanted to ask  
7 you about your book. I'm looking at page 225, a chapter  
8 entitled "Being on the Hot Seat".

9 A. Yes.

10 Q. Do you see that?

11 A. Yes.

12 Q. "...Without a doubt, the most vulnerable  
13 person in the police department is the Chief. The  
14 Chief is accountable for everything and I know many of  
15 them who have quit because they have had enough.  
16 Although you invariably start the job with the  
17 honeymoon period, the honeymoon fades quickly and then  
18 you get down to constantly juggling bouncing balls.  
19 The job description would be something like this. You  
20 must deal with an enormous number of expectations from  
21 a wide network of constituencies..."

22 And then you go on and it's the last sentence of the  
23 paragraph I was interested in,

24 "...Then you've got to deal with the media and with  
25 the rank and file and your police association and on  
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1            top of that you must be able to pass the microscope  
2            test on everything you do..."

3 Did you write that?

4            A.    Yes.

5            Q.    I'm going to suggest to you when you wrote  
6 "passing the microscope test" you were suggesting that your  
7 actions, what you say and what you do, are closely  
8 scrutinized?

9            A.    Yes.

10           Q.    And that in passing the microscope test, you  
11 must conduct yourself in the highest most professional  
12 fashion as a leader; correct?

13           A.    To the best of my ability, yes.

14           Q.    And that that is what is expected of you;  
15 correct?

16           A.    Yes.

17           Q.    Do you feel the same way about your Deputy  
18 Commissioners that they should also conduct themselves in  
19 that fashion?

20           A.    I believe that of every police officer, sir.

21           Q.    But you would agree with me that a  
22 Commissioner and Deputy Commissioners, you represent the  
23 top rank of a very large police service, so they have a  
24 particular duty as leaders, don't they?

25           A.    Yes, we do, all of us.  
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1 Q. Now, Deputy Commissioner Chris Lewis, you  
2 work closely with him?

3 A. I work closely with all the command staff.

4 Q. Deputy Commissioner Chris Lewis, you work  
5 closely with him?

6 A. I work closely with all of the command staff.  
7 He is one of them.

8 Q. All right. And he testified yesterday that  
9 he wouldn't use the word "execute" in terms of how to treat  
10 a subordinate officer, nor would he teach another officer  
11 to use the word "execute". That's what he said yesterday.

12 A. That's fine.

13 Q. You used the language -- it was interesting.  
14 You said that you use "police appropriate language".  
15 Isn't that what you said?

16 A. In the context of circumstances, yes.

17 Q. And you described the term, "Are you going to  
18 execute the disloyal one or am I", you described that term  
19 as police appropriate?

20 A. For certain circumstances, yes, and I  
21 qualified it, if you recall.

22 Q. I do, and you would include among the  
23 circumstances where it's appropriate to use the terms "Are  
24 you going to execute the disloyal one or do I", you would  
25 include in those circumstances addressing subordinate

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1 officers of yours about how to treat another subordinate  
2 officer; correct? That would be an example of an  
3 appropriate circumstance?

4            A. Well, an appropriate circumstance would be as  
5 I stated, putting final closure or putting closure to an  
6 issue that was beginning to create so many difficulties and  
7 those were the words I chose. I think, Mr. Falconer, you  
8 have to be mindful of the fact that nobody gets executed in  
9 policing. It's a -- it's a word that was used. Possibly,  
10 I would have chosen another word, but under the  
11 circumstances I just wanted to put closure to something  
12 that was causing an awful lot of trouble.

13            Q. It was a mistake to use that word?

14            A. Oh, I don't think it was a mistake. Under  
15 the circumstances, I felt it was the thing to say and I  
16 said it.

17            Q. All right. Because I thought you just said a  
18 second ago I might have used another word?

19            A. I might have but I'm not saying it was a  
20 mistake.

21            Q. All right.

22            A. I used what I felt was appropriate at the  
23 time.

24            Q. And you still think it's appropriate today?

25            A. Yes.

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1            Q. All right. So on March 1st, 2007 when you  
2 were addressing a Superintendent, a Chief Superintendent,  
3 and a Deputy Commissioner about the fate of my client,  
4 Superintendent Ken MacDonald, on March 1st, 2007, you said  
5 "Are you going to execute the disloyal one or should I"?  
6 That's what you said?

7            A. It really wasn't so much about your client,  
8 Mr. Falconer. It was about putting closure to the whole  
9 nonsense that had been going on with the misinformation,  
10 the mischief that was being caused, and I just wanted to  
11 get on with the business at hand which was to turn the  
12 corner on all of these issues and begin to deal with some  
13 real issues.

14           Q. All I'm trying to understand is in terms of  
15 language to use with subordinate officers, it's your  
16 position that that's appropriate language; correct?

17           A. Depending on the circumstances, Mr. Falconer.  
18 We're not -- we're not Sunday School children. Everyone  
19 is a grown-up and people at that level and rank can well  
20 discern and make allowances for that kind of language if  
21 they so choose.

22           Q. You wrote an E-mail February 21st. Do you  
23 recall Mr. Gover showed it to you, and the E-mail refers to  
24 your position on the mischief-making in Caledon. Do you  
25 remember he showed you the E-mail?

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1            A.    There was one here, yes.

2            Q.    All right.    I'm going to put it in front of  
3 you.    I don't want to be unfair about it.    It's Exhibit 21.

4            THE ADJUDICATOR:    I have Exhibit 21 here.

5 BY MR. FALCONER:

6            Q.    I have it here, as well.    I'll simply put it  
7 in front of you.    You wrote the E-mail February 21st at  
8 2:53 p.m.    Do you have it there?

9            A.    I do.

10           Q.    Your Deputy Commissioner, Deputy Commissioner  
11 Lewis, testified that when he got that E-mail that you sent  
12 he was under the impression that you were angry.    Is he  
13 right?

14           A.    He's wrong.    I was putting closure to the  
15 issue and I was rounding out the information.

16           Q.    All right.

17           "...Chris et al, Further to my earlier E-mail I want  
18 to add my concern about misinformation (mischief-  
19 making) being imparted to members of Caledon Council  
20 that can only be coming from OPP UNAUTHORIZED SOURCES.

21           Be on notice that I consider any such activity a  
22 betrayal, that if it continues, I will stop at nothing  
23 to trace back the person responsible AND deal he, she,  
24 them personally.    There is no place in the OPP for  
25 anyone to hide who is disloyal, disruptive, or

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1           dishonest for what it's worth. J.F..."

2 Does it surprise you that Deputy Commissioner Lewis took  
3 from this E-mail that you were angry?

4           A. Not at all, but the matter to take into  
5 account is my intent and my state of mind and my state of  
6 comfort in writing that. Again, that was to put closure to  
7 issues that had been creating an awful lot of difficulty in  
8 the organization and divisiveness, divisiveness, as well.

9           Q. And you say that you're not surprised that  
10 Deputy Commissioner Lewis took you to be angry because you  
11 would agree with me that the words chosen and the way you  
12 express yourself could reasonably create the impression to  
13 somebody reading it that you were angry, agreed?

14          A. It could.

15          Q. All right. And now we flip from February  
16 21st to March 1st in that parking lot, all right, in  
17 Caledon. The same topic, right? Yes?

18          A. Yes.

19          Q. And between February 21st and March 1st, you  
20 were of the opinion that Ken MacDonald was the mischief-  
21 maker; correct?

22          A. That was my state of mind to a great degree,  
23 yes.

24          Q. My client, who is currently the subject of  
25 these *Police Act* charges; correct?

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1            A.    Yes.

2            Q.    And again, Deputy Commissioner Lewis is of  
3 some assistance to us. He says in describing your body  
4 language and your demeanour in the parking lot -- he told  
5 this to the Adjudicator yesterday -- he described your body  
6 language as someone who was angry. Is he mistaken?

7            A.    I can only tell you that I wanted to put  
8 closure to the issue, I wanted to make my point, and I  
9 wanted to get on with things.

10           Q.    Are you reluctant to admit you were angry?

11           A.    Anger is something that I don't really  
12 ascribe to. Frustrated, disappointed, wanting to get  
13 forward, move forward. Anger is -- I wasn't angry.

14           Q.    Do you ever get angry?

15           A.    From time to time.

16           Q.    But not this time?

17           A.    No.

18           Q.    You considered the leaking of this  
19 unauthorized information that you put in block letters  
20 "unauthorized", to be serious, didn't you?

21           A.    Yes.

22           Q.    You considered it to actually be a  
23 "betrayal"?

24           A.    It came across that way, yes, and mischief-  
25 making.

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1 Q. But you wrote, among other things, a  
2 betrayal; right?

3 A. Yes, betrayal of an oath of office that  
4 police officers have to ascribe to and obey.  
5 Confidentiality issues, yes. Anybody doing that is  
6 betraying their oath of office.

7 Q. And they are betraying you as the leader?

8 A. They are betraying their oath of office.

9 Q. And that made you angry?

10 A. No, sir.

11 Q. You said it made you frustrated,  
12 disappointed; right?

13 A. Yes, yes, and wanting to move forward.

14 Q. Now, Deputy Commissioner Lewis, you've  
15 agreed, could have reasonably taken your E-mail as you  
16 being angry. Would you also agree that Deputy Commissioner  
17 Lewis could reasonably have taken your body language on  
18 March 1st, 2007 as being angry?

19 A. You'll have to ask him.

20 Q. No, I have asked him and that's what he saw.  
21 Now, I'm asking you --

22 A. Well, I --

23 Q. -- as the person who --

24 A. -- am not going to step into his shoes. I'm  
25 not going to step into his shoes and --

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1            Q.    If I can finish my question, sir?

2            A.    Well, I'm telling you I'm not going to --

3            Q.    I haven't finished my question, sir.

4            THE ADJUDICATOR:    All right.    Just a minute.

5            THE WITNESS:      Fine.

6            THE ADJUDICATOR:    You put your question.

7            MR. FALCONER:      Okay.

8            THE ADJUDICATOR:    And Commissioner, you listen.

9            THE WITNESS:      Yes, sir.

10 BY MR. FALCONER:

11            Q.    I'm not asking you to step in the shoes of  
12 Deputy Commissioner Lewis.    I'm asking you whether, knowing  
13 how you acted on March 1st, knowing how you behaved, do you  
14 agree that his perception, right or wrong, was a reasonable  
15 perception to have?

16            A.    I was not angry.

17            Q.    Do you understand my question?

18            A.    I was not angry.

19            Q.    I will repeat what I just asked.    Do you  
20 understand my question?

21            A.    Yes.

22            Q.    My question to you is not whether you were  
23 angry.    My question to you was whether, in your view, based  
24 on your actions on March 1st, Deputy Commissioner Lewis'  
25 impression of you was a reasonable one.

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1           A. I was not angry and I can't speak for what  
2 impressions he got of it.

3           Q. You didn't consider it a joking matter, did  
4 you?

5           A. No.

6           Q. The leaking of information?

7           A. No.

8           Q. You didn't consider the betrayal of an oath  
9 of office a joking matter, did you?

10          A. Not at all.

11          Q. So when you uttered the words "Are you going  
12 to execute the disloyal one or should I", it wasn't a  
13 moment of jocularly, was it?

14          A. Somewhat.

15          Q. It was?

16          A. Yeah, the terminology fit the circumstances  
17 and a way to put closure and anybody, any reasonable  
18 person, would understand that that comment was made but  
19 never able to be done anyway. I mean, it was said as a  
20 gesture of putting closure to it and getting on with things  
21 and --

22          Q. Just like your February 21st E-mail?

23          A. Any reasonable person would know the  
24 difference between reality and a word spoken which could  
25 never be realized.

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1            Q.    Just like your February 21st E-mail, correct,  
2 to put closure?

3            A.    Sure.

4            Q.    The same idea both times, right?

5            A.    Yes, sir.

6            Q.    The same state of mind both times, right?

7            A.    Pretty well.

8            Q.    Both times you were thinking about Ken  
9 MacDonald; right?

10           A.    I was thinking about the organization and the  
11 hurt and the disruption and the difficulty that had  
12 permeated outside the organization to the extent that I,  
13 along with the other folks mentioned, had to end up at  
14 Caledon Council to deal with this issue.

15           Q.    And your mind between February 21st and March  
16 1st, 2007, was that Ken MacDonald had caused that; right?

17           A.    I felt that he was responsible for some of  
18 it, yes.

19           Q.    Now, going to the next step, when you uttered  
20 the statement, "Are you going to execute the disloyal one  
21 or should I", you weren't in a joking mood, were you?

22           A.    No, I wasn't joking.

23           Q.    Right.

24           A.    But I wasn't about to execute anybody either.  
25 As I stated, a reasonable person would know the difference.

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1            Q. Chief Superintendent Bill Grodzinski March  
2 1st, 2007 tells me maybe he had an exposure of five months  
3 to you as a leader, correct?

4            A. On and off.

5            Q. Well, in fact, I'm over-stating it. You say  
6 you took over October 31st, 2006?

7            A. 30th.

8            Q. 30th, 2006. By my calculation, it's actually  
9 four months; right? November, December, January, February  
10 takes us to March 1st, right?

11          A. Yes.

12          Q. He would have had four months of exposure to  
13 you on and off as a leader; right?

14          A. Yes.

15          Q. One hundred and twenty days, right?

16          A. I guess.

17          Q. And you're telling Mr. Adjudicator that you  
18 would have expected by that point he would know you well  
19 enough when you, in a state as you put it, disappointment,  
20 frustration, upset with Ken MacDonald, he would know you  
21 well enough to somehow put no weight --

22          A. Just a moment.

23          Q. I'm going to finish my question.

24          THE ADJUDICATOR: Just a minute.

25          THE WITNESS: He's misstating facts, Your Honour.

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1            THE ADJUDICATOR: Commissioner, we'll deal with  
2            it later. Just answer the question. Put the  
3            question.

4            MR. FALCONER: Thank you.

5 BY MR. FALCONER:

6            Q. You're telling Mr. Adjudicator that you would  
7 have thought Chief Superintendent Grodzinski shouldn't take  
8 you seriously when you said who should execute the disloyal  
9 one, you or I? Is that what you're saying?

10           A. To correct you, my disappointment and  
11 frustration was not about Superintendent MacDonald. It was  
12 about the situation and wanting to get forward, and I  
13 believe that any reasonable person would have known the  
14 difference between the reality of a statement like that and  
15 the context in which it was made. And moreover, if Chief  
16 Superintendent Grodzinski was so distressed that he made  
17 what I referred to earlier as cheat notes, then I would  
18 have expected him to act on those and not keep them in his  
19 back pocket for some eight, nine months and surface them  
20 when it was convenient for him. He had a fiduciary duty to  
21 report me to a higher authority, to file a complaint, to do  
22 any number of things as a senior officer of this  
23 organization and according to his oath of office. He  
24 didn't do any of that.

25           Q. So you fault him --

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1            A.    So he couldn't have been that disturbed.

2            Q.    So you fault him for failing to act on your  
3 words?

4            A.    Well, I fault him for keeping cheat notes and  
5 not understanding the context in which all of this  
6 conversation took place.

7            MR. FALCONER:    Could I have a copy of Chief  
8 Superintendent Grodzinski's note, please?

9            MR. GOVER:    It's part of the exhibit, as well.

10 BY MR. FALCONER:

11            Q.    It's your position that a senior officer  
12 under your command, having been exposed to you for 120 days  
13 should have taken you to task for your choice of language?  
14 That's your position that if --

15            A.    My --

16            Q.    -- he had a problem with it, he should have  
17 taken you to task?

18            A.    My position is that you frame it in 120 days.  
19 I'm not a newbie into the police world and neither is  
20 Chief Superintendent Grodzinski. I'm sure that he would  
21 have known quite a lot more about me even before I arrived  
22 here and that's my position.

23            Q.    You made reference to Chief Superintendent  
24 Grodzinski keeping the notes in his back pocket for nine  
25 months. The notes that Chief Superintendent Grodzinski

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1 kept on March 1st, 2007 include a notation I shared with  
2 Mr. Gover that after the experience in the parking lot at  
3 Caledon, he went to his home, he noted this down, and he  
4 called Superintendent Ken MacDonald and told him about the  
5 statement. Did you know that?

6            A. No.

7            Q. That's something a senior officer might do  
8 for another officer if he fears for his future; right?

9            A. When you pick sides.

10           Q. "Are you going to execute the disloyal one or  
11 do you want me to?" Could there be any doubt, sir, that  
12 you had picked a side?

13           A. No, I was thinking of moving forward, as I  
14 told you. Enough was enough and I didn't want any more  
15 rhetoric to continue, misinformation, mis-communication,  
16 and we needed to move on.

17           Q. You would agree with me that the statement,  
18 the statement that I've just read to you, you would agree  
19 with me you said that; right? There is no doubt about  
20 that?

21           A. It's out of context but I said some of those  
22 words, yes.

23           Q. Well, you actually said the words "Are you  
24 going to execute the disloyal one or do you want me to"?  
25 You said those words, didn't you?

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1 A. Yes, I did.

2 Q. And you're not ashamed of that, are you?

3 A. No, I'm not.

4 Q. You're proud of that?

5 A. No, I'm not.

6 Q. You would agree with me that it's an  
7 inflammatory statement?

8 A. Under the circumstances, Mr. Falconer, taking  
9 it in context, it wasn't inflammatory at all.

10 Q. It wasn't?

11 A. No, it was not.

12 Q. You would expect someone who knew you to  
13 understand the statement and understand it's not  
14 inflammatory; correct? Isn't that your evidence?

15 A. A reasonable person would have, yes.

16 Q. How long has Superintendent Neale Tweedy, how  
17 long has he known you?

18 A. Oh, I don't know, about 30 years possibly.

19 Q. You assigned him to adjudicate the fate of  
20 the disloyal one; right? March 20th, 2007, you assigned  
21 Neale Tweedy to adjudicate the hearing of Ken MacDonald and  
22 Alison Jevons, am I right?

23 A. I did.

24 Q. On January 8th, 2008, he issued a ruling.  
25 Have you read the ruling?

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1            A.    No, I have not.

2            Q.    But you talked to Superintendent Tweedy about  
3 the ruling, didn't you?

4            A.    That he was recusing himself, yes.

5            Q.    He would have told you that the evening of  
6 January 7th before he issued the ruling; correct?

7            A.    I can't -- I don't know.

8            Q.    He would have told you that before he recused  
9 himself, right?

10           A.    It's probably right, yes.

11           Q.    Now, he says the following.

12           MR. GOVER: I'll ask that this be placed, thank  
13 you, before the Commissioner. Thank you.

14           THE ADJUDICATOR: Yes, that makes sense.

15           MR. FALCONER: Do you have a copy, Mr.  
16 Adjudicator?

17           THE ADJUDICATOR: I do.

18           MR. FALCONER: I'm looking at page four and I'm  
19 going to propose that it be made an exhibit  
20 because I realize it's not and it has been  
21 referred to a number of times.

22 BY MR. FALCONER:

23           Q.    So I'm putting a copy in front of you,  
24 Commissioner Fantino, and I'm asking you to direct your  
25 attention, please, to page four line 14.

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1            A.    Yes, sir.

2            Q.    Page four line 14 Superintendent Tweedy in  
3 ruling that he ought to disqualify himself and that you  
4 ought to testify said, quote,

5            "...Throughout the evening, I examined more of the  
6 materials that were put before me during the day  
7 yesterday and I came to the preliminary assessment  
8 that Chief Superintendent Grodzinski would be called  
9 by the Tribunal for cross-examination by either party  
10 to put into context the notes describing the  
11 inflammatory comments of Commissioner Fantino..."  
12 Superintendent Tweedy an unreasonable guy?

13           A.    Not at all.

14           Q.    This statement you made, "Are you going to  
15 execute the disloyal one or do you want me to," he  
16 interpreted as inflammatory, didn't he?

17           A.    It appears so.

18           MR. GOVER:    Perhaps we could have a moment before  
19 the examination continues. My concern is that  
20 what was put to the witness is not in proper  
21 context.

22           THE WITNESS:    It never is.

23           THE ADJUDICATOR:    Just a moment.

24 BY MR. FALCONER:

25           Q.    Did you just say "it never is", Commissioner?  
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1           A. That's correct, sir.

2           Q. All right. Commissioner, could I ask you a  
3 question? When you commented before about the decorum and  
4 hearing room rules, you were testifying, weren't you to the  
5 following effect? You thought that the hearing room and  
6 adjudicative room should be much like a courtroom and that  
7 people should conduct themselves in a professional and  
8 seemly fashion? That was your point, wasn't it?

9           A. Yes, it was.

10          Q. Do you consider editorials impugning the  
11 honesty of counsel or other statements like you just made  
12 "it never is" when you haven't been asked a question and  
13 counsel are exchanging views and submissions, do you  
14 consider that to be seemly behaviour?

15          A. Well, sir, you never cease to do it to me.

16          THE ADJUDICATOR: Just a moment, Commissioner.  
17 We're going to get through this day one way or  
18 the other, and I expect you as the Commissioner  
19 to answer questions by Mr. Falconer.

20          THE WITNESS: Yes, sir.

21          THE ADJUDICATOR: Do you understand my position?

22          THE WITNESS: I do, indeed.

23          THE ADJUDICATOR: I have a job to do, as well,  
24 and I don't want side comments made. You answer  
25 the question. Leave the side comments to me. If

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1 anybody is going to do it, I'll do it.

2 THE WITNESS: Yes, Your Honour.

3 THE ADJUDICATOR: But not you.

4 MR. GOVER: And Mr. Adjudicator, if I might  
5 address the issue that I had risen on earlier?

6 THE ADJUDICATOR: Yes.

7 MR. GOVER: And that was my concern that the  
8 statement put to the witness was out of context,  
9 and what has been put to the witness is, as I see  
10 it, at page four starting at line 9,

11 "...Throughout the evening, I examined more of  
12 the materials that were put before me during the  
13 day yesterday and I came to the preliminary  
14 assessment that Chief Superintendent Grodzinski  
15 would be called by the Tribunal for cross-  
16 examination by either party to put into context  
17 the notes describing the inflammatory comments of  
18 Commissioner Fantino..."

19 The point that I --

20 MR. FALCONER: Well, just before he makes it, it  
21 seems to me there is two things. I would ask him  
22 could he consider, please, asking for the witness  
23 to be excused if he thinks what he is about to  
24 say could impact on what the witness testifies  
25 about, one. And two, I think I know where my  
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1            friend is going and if my friend would like me to  
2            assist by putting other passages to him that he  
3            thinks are helpful to him, usually, I'm not so  
4            compliant but this time I will be because I think  
5            I know what his concern is and we can get going.

6            THE ADJUDICATOR: I think that's the way to go.  
7            Put it in proper context.

8            MR. FALCONER: That's fine. So can he just show  
9            me what he wants me to put to the witness and  
10           I'll do that and then we can keep going?

11           THE ADJUDICATOR: You started at line 9.

12           MR. GOVER: Yes, and in fact, fairness to the  
13           witness dictates that the passage that began at  
14           page three line 23 and especially at line 25 be  
15           drawn to the witness' attention.

16           MR. FALCONER: That's fine. I don't have --

17           MR. GOVER: In my submission, that's essential  
18           for the question to be fairly put to Commissioner  
19           Fantino.

20           MR. GOVER: I agree, Mr. Gover.

21           MR. FALCONER: I don't have a problem with that  
22           if Mr. Gover could just indicate where he wants  
23           me to start.

24 BY MR. FALCONER:

25           Q. To assist us to keep moving, I'm going to

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1 read you the passage that was before the passage I read to  
2 you. All right, Commissioner Fantino?

3            A. Yes, sir.

4            Q. So we're at page four line 2,  
5            "...Placed before me was an exhibit which reflected  
6            notes of Chief Superintendent Grodzinski. They  
7            contain what appear to be inflammatory statements made  
8            by Commissioner Fantino to Chief Superintendent  
9            Grodzinski regarding the character of Superintendent  
10           MacDonald. They were about an issue that appears to  
11           be unrelated to the issues before me, that being an  
12           issue in Caledon, Ontario, but nevertheless, were in  
13           such close proximity to the date of the signing of the  
14           charge sheet that it calls into question issues placed  
15           before me by Mr. Falconer..."

16 And then he goes out to say "throughout the evening" as I  
17 read to you earlier. I think that addresses Mr. Gover's  
18 concern.

19           MR. GOVER: It does.

20           THE ADJUDICATOR: Thank you.

21           MR. FALCONER: I would like to make this ruling  
22           the next exhibit, please.

23           THE ADJUDICATOR: So you mean the transcript?

24           MR. FALCONER: Yes, please.

25           THE ADJUDICATOR: So 58, Mr. Gover?

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1            MR. GOVER: Yes, I'm content with that, and I  
2            trust that Mr. Falconer will return, then, to  
3            this and ask a question in light of the further  
4            context.

5            MR. FALCONER: Absolutely not, absolutely not. I  
6            have put the full passage to him. If the witness  
7            wants to amplify the answer he gave before to me  
8            before, I'm happy.

9 BY MR. FALCONER:

10           Q. Is there something I have read to you now,  
11 sir, that changes the answers you gave me before?

12           A. Well, obviously, Superintendent Tweedy had  
13 information provided to him that interpreted certain notes  
14 and I wasn't privy to any of that. I don't know what  
15 people said, I don't know what people wrote, I don't know  
16 what people proffered up as their interpretation of the  
17 notes. He may have just adopted what was said or presented  
18 to him.

19           Q. He is like that, is he? He just adopts  
20 whatever is said?

21           A. Oh, Mr. Falconer.

22           Q. I'm asking you is he like that.

23           A. I'm not going to --

24           THE ADJUDICATOR: Do you know whether he is like  
25 that?

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1            THE WITNESS:    No, I don't know.

2            THE ADJUDICATOR:    That's a good answer.

3 BY MR. FALCONER:

4            Q.    Fine.    Backing up, he has known you for  
5 years.    He referred to it in two different places.    In one  
6 place, he calls it "What appears to be an inflammatory  
7 statement"; in the other place he calls it a straight flat-  
8 out inflammatory statement.    Now, I want to understand  
9 something.    Superintendent Tweedy, he has got a history as  
10 a police officer for decades, yes?

11           A.    Yes.

12           Q.    A high ranking police officer?

13           A.    Yes.

14           Q.    A respected police officer?

15           A.    Yes.

16           Q.    Has he ever on any occasion ever suggested to  
17 you that he considers inflammatory language to be police  
18 appropriate?    Has he ever told you that?

19           A.    I've never had that discussion with him.

20           Q.    But you, do you consider inflammatory  
21 language to be police appropriate?

22           A.    In the circumstances, Mr. Falconer, that I  
23 expressed, I felt that that was the right thing to say at  
24 that time.

25           THE ADJUDICATOR:    So do we have this exhibit that  
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1            we're going to --

2            MR. FALCONER: Yes, it's the transcript that is  
3            the next exhibit.

4            THE ADJUDICATOR: Is that it?

5            MR. FALCONER: No, it's not. I handed -- I  
6            thought we were using your copy but I will --

7            THE ADJUDICATOR: I would rather not.

8            MR. FALCONER: We will provide another copy.

9            THE ADJUDICATOR: The one in front of the  
10           Commissioner.

11           MR. FALCONER: Thank you very much.

12           THE ADJUDICATOR: So 58, Mr. Gover.

13           MR. GOVER: Yes, thank you.

14           EXHIBIT NO. 58:    Transcript of Proceedings  
15           January 8, 2008 - Ruling by Superintendent Neale  
16           Tweedy.

17 BY MR. FALCONER:

18           Q. I'm showing you a copy of the *Police Services*  
19 *Act* that includes the Code of Conduct, and this Code of  
20 Conduct governs both police chiefs and members of the  
21 Force, am I right?

22           A. That's correct.

23           Q. The area that I want to draw your attention  
24 to, and I have, in fact, side-barred it, the first page  
25 simply indicates that it's important to follow the Code of

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1 Conduct, that it's an offence if you don't, right?

2 A. Right.

3 Q. That's s.74 of the *Police Services Act*. It's  
4 really the second page I would ask you to draw your  
5 attention to, and I believe it's side-barred for you, isn't  
6 it?

7 A. Yes.

8 Q. Section 2(1)(a), "Defining Discreditable  
9 Conduct", have you seen that before?

10 A. Oh, yes.

11 Q. Section 2(1)(a)(iii) and (iv),  
12 "...Any Chief of Police or other police officer  
13 commits misconduct if he or she engages in  
14 discreditable conduct in that he or she is guilty of  
15 oppressive or tyrannical conduct towards an inferior  
16 in rank, or (iv), uses profane, abusive, or insulting  
17 language to any other member of a police force..."

18 Are you familiar with those provisions?

19 A. Yes, I am.

20 Q. Now, I want to understand something. Does it  
21 say anywhere here that any abusive or insulting language is  
22 acceptable if it's police appropriate? Does it say that  
23 anywhere?

24 A. No, it does not.

25 Q. Would you agree with me that in a moment of  
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1 upset, frustration, anything but humour, referring to a  
2 junior officer as someone who should be executed is, in  
3 fact, acting in a fashion that is tyrannical?

4            A. Devoid of context, it probably could be, it  
5 possibly could be. It might be.

6            Q. And the reason it possibly could be or might  
7 be is because there is an imbalance of power between you,  
8 as Commissioner, and the person sitting in the chair behind  
9 me, Superintendent Ken MacDonald; right?

10           A. It has nothing to do with only subordinates.  
11 It could be used -- it could reflect in any circumstance,  
12 but yes, it could do with a person in authority.

13           Q. You know the word "tyrannical" that's in this  
14 Code of Conduct, "tyrannical" comes from the term "tyrant".  
15 You know that? Yes?

16           A. If you say so.

17           Q. You know the word "tyrant" refers to an  
18 imbalance of power, somebody who has power over somebody  
19 else, yes?

20           A. Yes, sir. Yeah.

21           Q. You're someone who, if you want something to  
22 happen, if you want something to happen and you want to be  
23 vindictive about it, you could do it with the stroke of  
24 your pen, am I right?

25           A. No, I could not.

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1            Q.    Do you remember talking to Brian Gover,  
2 counsel for the prosecutor here on September 24th, 2008,  
3 Wednesday?

4            A.    Not specifically.

5            Q.    Well, Mr. Gover made notes. I'm going to  
6 read to you the note, "Transfer of Grodzinski?" A. answer,  
7 that's you answering,

8            "There was a hole in NER. Chief Miller was retiring.

9            I had limited knowledge of people in this  
10 organization..."

11 I'm placing one before you, Mr. Adjudicator. It's the last  
12 paragraph.

13            MR. GOVER: Can I place it before the  
14 Commissioner, then?

15            THE ADJUDICATOR: Thank you, Mr. Gover.

16 BY MR. FALCONER:

17            Q.    "Transfer of Grodzinski?" Do you see that  
18 last paragraph?

19            A.    Yes.

20            Q.    "Answer: There was a hole in NER." That's  
21 Northeast Region, right?

22            A.    Right.

23            Q.    "...Chief Miller was retiring. I had limited  
24 knowledge of people in this organization. I relied on  
25 Deputy Lewis, Deputy Beechey, and it came up that

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1 Grodzinski was from North Bay, his wife had family in  
2 North Bay. I thought this was a perfect fit. When I  
3 found out it was a hardship, his wife was ill, I  
4 killed it. It was a well-intentioned decision. There  
5 is still administrative transfer in any event for  
6 exigencies of the OPP. I could have done it with the  
7 stroke of a pen if I wanted to be vindictive..."

8 A. Yes.

9 Q. That's the power imbalance I'm talking about,  
10 sir. That's how you view your powers. If you want to be  
11 vindictive, you can do it with the stroke of a pen, isn't  
12 that what you told Mr. Gover?

13 A. If I wanted to be, yes.

14 Q. And it's fair to say that that would be  
15 tyrannical, right? Wouldn't it?

16 A. If I was being vindictive, yes.

17 Q. You would agree with me being able to do  
18 something with a stroke of your pen is quite reflective of  
19 real power, isn't it? You've got real power?

20 A. No, Mr. Falconer, I have authority,  
21 responsibility, and accountability.

22 Q. And your authority allows you to do things,  
23 as you put it in this statement, with a stroke of your pen?

24 A. Again, it's a figure of speech in that I have  
25 never exercised it. The reality is, I suppose if I was  
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1 vindictive -- and I'm not -- I could go that route, yes.

2            Q.    You have the power to do it?

3            A.    If I was vindictive.

4            Q.    Now, let's back up.  You're a man who has the  
5 power to do that with the stroke of your pen if you're  
6 vindictive; right?

7            A.    That's correct.

8            Q.    Superintendent Ken MacDonald finds out on  
9 March 1st, 2007, as does Chief Superintendent Grodzinski,  
10 that you are also a man who talks in terms of executing  
11 disloyal ones; right?  That's what they learn on March 1st,  
12 2007; right?

13           A.    Yes.

14           Q.    And you would agree with me now that you know  
15 that Chief Superintendent Grodzinski didn't make these  
16 notes and keep them in his back pocket, he actually  
17 reported the target of your comment to the target?

18           A.    His duty was to report up, sir.  If he felt  
19 that I was acting inappropriate, unprofessional, unethical,  
20 contrary to the *Police Services Act*, he had a fiduciary  
21 duty to report up, not down or sideways.

22           Q.    Let's break that down for a minute.

23           A.    Sure.

24           Q.    He would report it not to a police services  
25 board, am I right?

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1            A.    Not in this circumstance, no.

2            Q.    No.    He would have to find that bureaucrat  
3 who isn't exactly advertised?    He would have to go find the  
4 Deputy Minister, Deputy Minister Deb Newman, and report  
5 your conduct to her, wouldn't he?

6            A.    Or to the -- or to the Commissioned Officers  
7 Association or to -- or file a complaint himself.    He would  
8 have had many options to express his concern about what he  
9 perceived to be inappropriate conduct.

10           Q.    Let's see the two things he did.    One, you  
11 called it pushing back.    He pushed back right there and  
12 then, didn't he?    That's what you said.

13           A.    He was wanting to continue the debate, yes.

14           Q.    You described it before as pushed back.

15           A.    Yeah, well --

16           Q.    Are you taking it back?

17           A.    I'm explaining it to you.

18           Q.    All right.    You agree with me he pushed back  
19 right there and then?

20           A.    Yes.

21           Q.    He stood up to a man talking about  
22 executions.    He stood up to him and said it was wrong, you  
23 were wrong, you had it wrong?    Am I right?

24           A.    That was before the final closure.    The push-  
25 back or the debate was before I made my statement.

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1            Q.    Your statement about executing Ken MacDonald  
2 was meant to end the debate; right?

3            A.    Absolutely.

4            Q.    You have the power by using certain words to  
5 scare people into silence; right?

6            A.    Wrong.

7            Q.    Tyrannical, that's what the Code of Conduct  
8 talks about and how one addresses inferior officers.  
9 Doesn't it talk about that?

10           A.    Just because you read it that way, it doesn't  
11 mean that it fits me, sir.

12           Q.    Would you agree with me that this Code of  
13 Conduct is designed to ensure that officers don't use their  
14 rank to bully junior officers? Would you agree with that?

15           A.    Or their positions, not necessarily rank. It  
16 could be any number of things.

17           Q.    I want to put, as you put it, a little more  
18 context on this. You took over the OPP on October 30th,  
19 2006. That happens to be a little over a month after Karl  
20 Walsh wrote the OPP complaining about Professional  
21 Standards. Are you aware of that?

22           A.    I believe I was, yes.

23           Q.    You told Mr. Gover when he asked you that it  
24 didn't mean that much to you that the complaint aimed at  
25 Ken MacDonald and Alison Jevons came from the President of  
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1 the OPPA, it didn't mean that much to you. Do you remember  
2 telling him that?

3            A. I probably did.

4            Q. And you told him that because it's true, am I  
5 right?

6            A. In the context and in light of all the other  
7 issues surrounding this particular issue, it didn't mean as  
8 much as one might think.

9            Q. I'm showing you Exhibit 42. This is the  
10 letter dated September 14th, 2006 from Karl Walsh that is  
11 the letter of complaint. Now, you took over on October  
12 30th, 2006, meaning basically, you took over the next month  
13 after Walsh started that complaint; right?

14           A. Yes, sir.

15           Q. You would have had a number of meetings with  
16 Karl Walsh as you were taking over the OPP, am I right?

17           A. Wrong.

18           Q. Did you meet with him at all?

19           A. Not that I recall.

20           Q. Did you have any discussions with Karl Walsh?

21           A. Prior to me coming here?

22           Q. No, at the time that you came here.

23           A. Eventually, I did, yes.

24           Q. When was the first time that you talked to  
25 the President of the OPPA?

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1            A. I have no recollection of that.

2            Q. Would it have been within a matter of days of  
3 taking over as Commissioner of the OPP?

4            A. I have no recollection of that.

5            Q. Is it possible that it would have been within  
6 a matter of days?

7            A. I have no recollection of that.

8            Q. When is the first time you actually remember  
9 speaking to Karl Walsh?

10           A. I have no recollection of that either.

11           Q. Do you ever make notes of the meetings that  
12 you have with individuals of office such as the President  
13 of the OPPA?

14           A. No, I don't.

15           Q. Would you agree with me that one of your jobs  
16 when you take over a leadership position like the  
17 Commissioner of the OPPA -- I'm sorry, the Commissioner of  
18 the OPP, is to actually consult and canvass with the  
19 various constituencies and stakeholders? It's one of your  
20 jobs?

21           A. It's not one of my jobs. It's one of the  
22 things that one does as a matter of courtesy and just a  
23 need to get up to speed on issues.

24           Q. And you saw that as one of the things to do;  
25 correct?

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1            A.    Yes.

2            Q.    And Karl Walsh would count among the  
3 constituencies or stakeholders that you would do that with?

4            A.    He would.

5            Q.    And it was during those consultations in the  
6 early days that you learned the concerns over PSB, am I  
7 right?

8            A.    During my early arrival here, not necessarily  
9 with regards to Karl Walsh.

10           Q.    I'm simply asking if, in those early days  
11 when you spoke to OPPA representatives you learned about  
12 the concerns over the PSB?

13           A.    At some point in time I did, yes.

14           Q.    And it would have been prior to you attending  
15 a Commissioner Committee meeting where you expressed those  
16 concerns, am I right?

17           A.    It could be.

18           Q.    Well, Deputy Commissioner Lewis testified  
19 that sometime between mid October, 2006 and mid November,  
20 2006 you attended at a Commissioner's Committee meeting  
21 where you had materials and you advised that concerns had  
22 been expressed to you by OPPA representatives and  
23 adjudicators about the PSB. Is Deputy Commissioner Lewis  
24 being accurate?

25           A.    I believe he would be, yes.

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1            Q.   Now, since we know you took over October 30,  
2 that must mean that sometime between October 30th, 2006 in  
3 that two week period up to November 15th, 2006, at some  
4 point you would have received concerns by the OPPA about  
5 the Professional Standards; correct?

6            A.   That seems to be right, yes.

7            Q.   I wonder, in terms of adjudicators you would  
8 have heard the concerns from, it's safe to say that the  
9 only full-time adjudicator at the time was Superintendent  
10 Morris Elbers; correct?

11          A.   Yes.

12          Q.   So the concerns you heard about Professional  
13 Standards when they came from adjudicators would largely  
14 have come from him; correct?

15          A.   Through him, yes.

16          Q.   I first want to deal with the OPPA  
17 expressions of concerns. Did you have any sense in hearing  
18 from Karl Walsh or his other representatives that they were  
19 trying to get ammo on Ken MacDonald? Did you have any  
20 concern about that?

21          A.   No, I didn't.

22          Q.   Did you see them as the kind of people that  
23 would take what obviously would be very serious issues such  
24 as police discipline, did you see them as the kind of  
25 people that would be trying to quote "get ammo" on Ken

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1 MacDonald? Did you see them as those kind of people?

2            A. I suppose -- I didn't see them as that.

3            Q. All right.

4            A. But you know, I can't interpret what they see  
5 in their world.

6            Q. And you didn't see them that way, and I take  
7 it to date you still don't see them that way?

8            A. No, I see them as having a role,  
9 responsibility. They are duly constituted. It's people  
10 you have to work with.

11           Q. But you can agree with me that duly  
12 constituted people and duly constituted institutions can  
13 become tools of abuse by improperly motivated people;  
14 right?

15           A. Yes.

16           Q. But you didn't see them like that; correct?

17           A. I did not, no.

18           Q. You were fresh on the scene, though? You had  
19 only been there a matter of weeks when you met with them;  
20 right?

21           A. Yes.

22           Q. And in fact, you took the concerns you  
23 received as a sincere, face value concerns that you brought  
24 to the Commissioner's Committee table; right?

25           A. I took them as concerns that needed to be  
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1 addressed one way or the other.

2            Q. Right. And we've heard from Deputy  
3 Commissioner Lewis that one of your mechanisms for  
4 addressing these concerns was to move Ken MacDonald out of  
5 Professional Standards; right? That's what we heard from  
6 Lewis yesterday.

7            A. Well, that may have been his sole  
8 interpretation, but as I indicated earlier, I wanted to  
9 also give both Superintendent MacDonald and Inspector  
10 Jevons a new lease on life and get on with their careers.  
11 So it wasn't the sole issue, but clearly, something had to  
12 be done. And by the way, they weren't the only persons in  
13 there that needed a change. Inspector Messham was another.

14           Q. You're talking about the Bureau Commander.  
15 Now, you did hear from Karl Walsh in that time period about  
16 his concerns with Ken MacDonald; right?

17           A. Yes -- the unit, yes.

18           Q. And you heard from Morris Elbers, the  
19 Adjudicator, about his concerns with Ken MacDonald; right?

20           A. About the unit.

21           Q. And then, of course, Ken MacDonald ultimately  
22 was your command officer? He was actually the one that  
23 indirectly reported to you as Commissioner? He was your  
24 command officer, right, not Karl Walsh and not  
25 Superintendent Elbers; right?

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1           A. He was the officer in charge of Professional  
2 Standards, yes.

3           Q. And he indirectly reported to you, right,  
4 indirectly?

5           A. No, he reported directly.

6           Q. All right. So of course, before you moved  
7 him out you would have given him the courtesy of putting to  
8 him the concerns expressed by the OPPA and the Adjudicator?  
9 You would have gone and met with him before you moved him  
10 out and put on the table what the concerns were so he would  
11 have a fair chance to respond? You did that, didn't you?

12          A. I believe I did.

13          Q. You didn't, sir. You never met with him  
14 once.

15          A. I met with him numerous times.

16          Q. You met with him for the first time at a  
17 Christmas event after you moved him out, isn't that true?

18          A. It could be.

19          Q. Isn't it fair to say, sir, that in the world  
20 of politics keeping the OPPA happy is an important part of  
21 your job because your job is so much more difficult with  
22 votes of non-confidence? Isn't that true? Isn't that  
23 true?

24          A. No, it's not. I'm not here to --

25          Q. You weren't the subject of a note of non-  
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1 confidence?

2            A. Well, hold on now. Can I finish?

3            Q. Sure you can. I apologize for interrupting.

4            A. My --

5            THE ADJUDICATOR: Just a moment. I'm just  
6 wondering what has this got to do with -- like  
7 what is happening here? Commissioner, I'm going  
8 to have you leave for a moment.

9            THE WITNESS: Thank you, Your Honour.

10           THE ADJUDICATOR: I just want to know what is  
11 coming.

12 --- Witness leaves at 3:35 p.m.

13           MR. FALCONER: It's very fair of you to ask, Mr.  
14 Adjudicator, and I'm happy to answer.

15           THE ADJUDICATOR: Yes, I would like to hear what  
16 you have to say on this because I don't know what  
17 is coming but I suspect I know. Go ahead.

18           MR. FALCONER: I'm not going into a lot of detail  
19 with past historical dealings with unions before.

20           I'm simply pointing out by way of foundation  
21 that often consideration for any chief taking  
22 over a police unit is appeasing of the OPPA or  
23 any police association if at all possible. Now,  
24 the evidence I expect -- first of all, the  
25 evidence I have elicited so far is that steps

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1            were taken against my client moving him out when  
2            he didn't want to be moved to a place he didn't  
3            want to go to without any consultation with him,  
4            and the only consultation that did happen about  
5            him was with the head of the OPPA and  
6            Superintendent Elbers.

7            That's where I'm headed. Now, why is this  
8            relevant? It's relevant for this reason. This  
9            is a very odd prosecution. There is only one  
10           public complainant involved in this case so many  
11           stages back, so many layers underneath, and you  
12           know the narrative as well as anyone could. Her  
13           evidence before you was the only two police  
14           officers that ever really helped her were  
15           Superintendent MacDonald and Inspector Jevons.  
16           You heard that from her.

17           She was moved out of her home instead of the  
18           accused in a domestic who was a police officer.  
19           These officers were charged with investigating  
20           that, and then they find themselves in  
21           circumstances where they become the targets of  
22           the investigation and a new OPP Commissioner  
23           comes in, takes a series of grievances from the  
24           union, drops it on a table at a Commissioner's  
25           Committee meeting, and MacDonald is out without

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1 so much as a meeting or an opportunity to answer  
2 for the allegations against him.

3 Then I go to Exhibit 35, which I haven't  
4 done with the witness yet, but you're more than  
5 familiar with it, Exhibit 35 that describes from  
6 Gavin May to Karl Walsh, "We may have the ammo to  
7 take down MacDonald." "We may get two for the  
8 price of one." It describes bad faith, this  
9 exhibit, but this Commissioner is new on the  
10 scene.

11 He doesn't know the players. He doesn't  
12 know the politics that you have now heard about,  
13 Mr. Adjudicator. He doesn't know the politics  
14 that Kate Karn, counsel at the Professional  
15 Standards, told you about, and he acts on those  
16 concerns without knowing about them.

17 THE ADJUDICATOR: What prompted me is I heard  
18 words like vote of confidence or something.

19 MR. FALCONER: Non-confidence.

20 THE ADJUDICATOR: That's what I mean. What is  
21 that all about?

22 MR. FALCONER: Commissioner Fantino when he was  
23 Chief of the Toronto Police Service, was the  
24 subject of a vote of non-confidence by the  
25 Toronto Police Association.

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1 THE ADJUDICATOR: Well, that's what I'm saying.

2 Like how is that going to help me? It's a

3 collateral issue right down --

4 MR. FALCONER: It is and it isn't, but I would be

5 happy to skate over that. It's the issue of

6 wanting to appease the Association, that isn't

7 collateral. I don't want to be convoluted and I

8 don't want to sort of be vitriolic about this.

9 I'm trying to draw the straight line to where I'm

10 going. The issue is if he had sort of a clear

11 imperative to need to appease union early and

12 considers that a high priority, he may, frankly,

13 not be as rigorous in analyzing people's motives

14 as he might otherwise have been. That's where

15 I'm going, and if you would prefer I didn't refer

16 to the words "non-confidence" or that vote, I

17 would be happy to.

18 THE ADJUDICATOR: I don't want you to touch that

19 area at all.

20 MR. FALCONER: All right.

21 THE ADJUDICATOR: I mean, if you want to talk

22 about OPPA and Superintendent Elbers, go ahead.

23 MR. FALCONER: No, I understand.

24 THE ADJUDICATOR: But I don't want you to get

25 involved with this vote of --

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1 MR. FALCONER: No, that's fine.

2 THE ADJUDICATOR: I don't think that's fair.

3 MR. FALCONER: All right.

4 THE ADJUDICATOR: Do you want to say anything,  
5 Mr. Gover?

6 MR. GOVER: Well, I was about to make pretty much  
7 that submission. It's fair enough to put the  
8 question isn't it true that keeping the OPPA  
9 happy was part of the job. Fair enough. That's  
10 in issue.

11 THE ADJUDICATOR: I agree.

12 MR. GOVER: But it's the collateral issues that  
13 take us down the garden path, in my submission,  
14 and you have identified one, sir. In addition,  
15 we're right on the edge here of relevance and  
16 irrelevance in terms of the series of questions  
17 about Superintendent MacDonald not wanting to go  
18 to the Highway Safety Division. We have no  
19 evidence about that. That has never been pleaded  
20 and we are now on a Fresh as Amended Notice of  
21 Motion. So fair enough, I say, let's deal with  
22 the issue of the OPPA, let's deal with the issue  
23 of the adjudicators. Let's not deal with these  
24 collateral or side issues.

25 MR. FALCONER: Well, first of all, I want to be  
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1            clear. I'm entitled to put to the witness that  
2            MacDonald didn't want to go. MacDonald advised  
3            his superiors of that, and I'm going to try to  
4            elicit that out of this witness. I'm entitled to  
5            put that to him and that's all I did, and I hear  
6            what you said, Mr. Adjudicator, so no more need  
7            be said. I'm happy to just keep moving.

8            THE ADJUDICATOR: I agree. So we'll have the  
9            Commissioner return.

10 --- Witness returns at 3:40 p.m.

11            THE ADJUDICATOR: Commissioner, I know you know  
12            this but I've got to just remind you again that  
13            you're under oath to tell the truth.

14            THE WITNESS: Thank you, Your Honour.

15            THE ADJUDICATOR: Thank you.

16 BY MR. FALCONER:

17            Q. I've got Exhibit 35 in front of you. It's an  
18 E-mail from Gavin May, the lawyer for the OPPA, to Karl  
19 Walsh, President of the OPPA. It's dated August 30th,  
20 2006. Do you see that?

21            A. Yes, I do.

22            Q. Have you ever seen this E-mail before?

23            A. No.

24            Q. Have you ever been told the contents of this  
25 E-mail before?

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1           A. I was made aware that there was such an E-  
2 mail, yes.

3           Q. When were you made aware?

4           A. The last day or so.

5           Q. Who made you aware?

6           A. I believe it was in briefings with counsel.

7           Q. When you said the last day or so and you said  
8 counsel, first of all, counsel is Mr. Gover?

9           A. Yes.

10          Q. The last day or so, was it today?

11          A. No, it was not today. It was -- I believe it  
12 was yesterday or the day before.

13          Q. Brief indulgence. Is it possible that you  
14 saw Mr. Gover this morning rather than yesterday? Is that  
15 possible?

16          A. Yes, it is.

17          Q. All right. I'm just trying to avoid a crisis  
18 when we don't need any. That E-mail, when you read it did  
19 you find it to be particularly noteworthy as an E-mail?

20          MR. GOVER: Actually, he said he was made aware  
21 of it, not that he read it, with respect.

22          MR. FALCONER: All right. That's fair, that's  
23 fair.

24          THE ADJUDICATOR: That's right.

25 BY MR. FALCONER:

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1            Q. Let me read you the E-mail.  
2            "...Karl, we may have the ammo to take down MacDonald.  
3            When we met with him on Monday after the PSA hearings  
4            to tell him personally what I had said on the record,  
5            I also explained our perception that PSB had been  
6            aware that the Jevons' report was flawed, that had her  
7            report adequately outlined Police Orders, they would  
8            have concluded that Zulinski had not breached Police  
9            Orders but that they were proceeding with the hearing  
10           anyway and were doing nothing to prevent a travesty of  
11           justice..."

12 Now, I'm going to skip to the next -- to the third  
13 paragraph,

14           "...We may get two for the price of one. In addition  
15           to the substance of Jevons' report, she also made some  
16           basic mistakes which show a complete misunderstanding  
17           of the PSA process..."

18 Now, can I ask you something? Superintendent Mary  
19 MacLachlan testified that she found this E-mail offensive.  
20 Now, Superintendent Mary MacLachlan is the head of  
21 Professional Standards; right?

22           A. Yes, she is.

23           Q. Do you agree with her that this E-mail is  
24 offensive?

25           A. It's inappropriate, yes.

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1            Q. Do you agree with Mary MacLachlan that the E-  
2 mail is offensive?

3            A. I don't get offended that easy, Mr. Falconer.  
4 I see it as inappropriate.

5            Q. It may give rise to an inference that the  
6 complaint of September 14th -- do you see that complaint  
7 letter there? It's right beside you to your left. There  
8 is a complaint letter September 14th. It should still be  
9 in front of you.

10           MR. GOVER: It's Exhibit 42.

11           THE ADJUDICATOR: Exhibit 42.

12           MR. FALCONER: Yes.

13           THE WITNESS: All right.

14 BY MR. FALCONER:

15           Q. It may give rise to an inference that the  
16 complaint letter of September 14th, 2006 that was written  
17 15 days later was improperly motivated, would you agree?

18           A. I haven't read it, Mr. Falconer. I can't  
19 tell you. I can't answer that question. I don't know. I  
20 haven't read it. I don't know the content.

21           Q. The September 14th, 2006 letter, you haven't  
22 read it?

23           A. No, I haven't read it.

24           Q. Have you ever read it before?

25           A. I may have, but I have no recall.

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1            Q.    You said to Mr. Gover before that it didn't  
2 matter to you that the OPPA started the complaint.  Didn't  
3 you say that to him?

4            A.    And that's true.

5            Q.    How do you identify the legitimacy of the  
6 motives of people commencing proceedings against your  
7 command officers if you don't actually know who they are?  
8 How do you do that?

9            A.    I'm sorry, I don't get...

10           Q.    How do you identify the legitimacy of the  
11 motives, the good faith nature of the motives of people  
12 starting proceedings against your commissioned officers?

13           A.    Through diligent investigations which  
14 Superintendent Van Zant eventually did.

15           Q.    Deputy Commissioner Lewis testified that, as  
16 of late January, 2007, it was already clear that MacDonald  
17 and Jevons were likely to be charged.  That's what he  
18 testified to yesterday.

19           A.    That may have been his opinion, yes.

20           Q.    He said that opinion was gained based on  
21 attendances he had at various Commissioner Committee  
22 meetings; is that fair?

23           A.    It could be.  I can't speak for him.

24           Q.    I only ask you that because Superintendent  
25 Van Zant's report wasn't done until March, '07.  Did you

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1 know that?

2            A. But there were briefings as to the progress  
3 and the issues.

4            Q. So in your mind -- because there is a note,  
5 there is a note of a statement by Deputy Commissioner Lewis  
6 on January 24th, 2007, there is a note of a statement which  
7 he adopted that by January 24th it's your evidence that  
8 Deputy Commissioner Lewis is likely to have been right that  
9 it would have been apparent by that point that they were  
10 going to be charged; correct?

11           A. Could I have a look at the statement?

12           Q. Sure.

13           A. I don't even know what it says.

14           Q. Sure. Can we have the note, please? While  
15 Mr. Mathai is pulling the note, I will give you the two  
16 line gist of it. The two line gist of it is who is  
17 MacDonald to say or complain about another officer, he is  
18 likely to face charges himself under the *Police Act*, and  
19 His Honour who was there yesterday when it was read out  
20 will confirm that that is the essence of the note which  
21 we'll find. Now, it was the explanation of Deputy  
22 Commissioner Lewis, first of all, that he was talking about  
23 the charges that are going on today. Okay. That's what he  
24 was talking about. All right. And secondly, he said that  
25 that note was correct because by that point in time it was

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1    apparent.    That is, by January 24th, 2007 it was apparent  
2    that MacDonald and Jevons would be facing charges.    What  
3    I'm asking you is do you agree with Deputy Commissioner  
4    Lewis?

5            A.    I can't agree totally because the only time  
6    that that could be validated, that statement could be  
7    validated or confirmed, when I signed the charges.    That  
8    may have been a discussion that was taking place.    I can't  
9    recall it, but the only time that actual charges would be  
10    laid is when the charge sheets or the Notice of Hearing  
11    would be signed.

12           Q.    Well, you asked to see the notes and I'll  
13    show you.    It's dated Wednesday, the 24th of January, 2007.  
14    I have side-barred the bottom part.    I'll read over your  
15    shoulder.    It's a record of Deputy Commissioner Lewis'  
16    statement,

17           "...Goes on to comment regarding internal  
18    investigation Ken MacDonald..."

19           A.    Who goes on to comment?

20           Q.    Deputy Commissioner Lewis.    This is a  
21    conversation with him.

22           "...Fucking guy under investigation and likely to be  
23    charged under *Police Act*.    Who is he to comment on  
24    Harski [*sic*]..."

25           A.    Well, I don't know who said what to whom

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1 here.

2            Q. Well, I'm telling you that the evidence of  
3 Deputy Commissioner Lewis yesterday when he said --

4            A. I never used those words.

5            Q. No, no, it's not attributed to you, sir. I  
6 said the evidence of Deputy Commissioner Lewis yesterday  
7 was that he used those words in a conversation with Bill  
8 Grodzinski.

9            A. Well, Mr. Falconer, that may be his opinion  
10 and it may be his view, it may be his understanding. My  
11 understanding of the whole affair is that I exercised due  
12 diligence waiting for the investigation to be concluded  
13 before I signed off on it.

14           Q. Because you would agree that if you didn't  
15 have an Investigation Report it wouldn't be appropriate to  
16 conclude someone was going to be charged, would it?

17           A. Well, you know, people make their opinion  
18 based on many -- make up their opinions based on many  
19 things. All I'm telling you is what I did, and my role  
20 here was to make sure that there was due diligent  
21 investigation carried out, which in fact was happening, and  
22 based on those findings is when I made up my mind as to  
23 what I needed to do. I can't speak to that conversation.

24           Q. Deputy Commissioner Lewis said that he gained  
25 the impression that MacDonald and Jevons were going to be  
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1 charged by Commissioner Committee meetings leading up to  
2 January 24th, 2007. I'm just relaying his evidence  
3 yesterday, then I'm going to ask you a question. All  
4 right. That's what he testified to, that he gained that  
5 impression by Commissioner Committee meetings and updates  
6 from Carson leading up to January 24th, 2007. Is it your  
7 evidence that you weren't of that view as of January 24th  
8 -- as of July -- I apologize, as of January 24th, 2007?  
9 Is that your evidence?

10            A. My evidence is that I would have waited for  
11 the results of the investigation before I decided one way  
12 or the other, and that's what I did.

13            Q. Looking at Exhibit 35, the E-mail, you would  
14 agree with me that if you had Exhibit 35 in your hands, if  
15 you had it in your hands at the time that the complaint  
16 letter of September 14th, 2006 was brought to your  
17 attention, it would cause you some pause, wouldn't it?

18            A. I can't answer hypothetical questions, Mr.  
19 Falconer. I don't know what would have happened.

20            Q. You can answer hypothetical questions if Mr.  
21 Adjudicator permits you to. Now, I'm asking you if  
22 hypothetically you had that E-mail when you read the OPPA  
23 complaints of September 14th, 2006, it would have caused  
24 you some pause, wouldn't it?

25            A. I would have probably passed it on to Deputy  
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1 Commissioner Carson who was heading up the investigation  
2 with the assistance or with the help of Superintendent Van  
3 Zant. I wouldn't have known all this context.

4            Q. And you didn't -- well, let me back up. And  
5 the reason you would have passed it on to Superintendent  
6 Van Zant and Deputy Commissioner Carson, the reason is it  
7 would figure into the investigation, it would have to be  
8 weighed?

9            A. They would have to make that calculation.

10           Q. That's right, but it would be a calculation  
11 you would expect them to make?

12           A. I would expect them to read it and make their  
13 own decision.

14           Q. Right. But they can't do that if they don't  
15 have it; right?

16           A. Well, that's...

17           Q. Now, one of the things that happens in these  
18 investigations is officers get an opportunity to say their  
19 side of the story with a Use of Force -- I'm sorry, with a  
20 Duty Report; correct?

21           A. Yes.

22           Q. And that's an important part of the process;  
23 isn't it?

24           A. Yes.

25           Q. An opportunity to say your side of the story;

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1 right?

2            A. Normally, yes, it's done. Yes.

3            Q. It's a matter of fairness, isn't it?

4            A. Process.

5            Q. But it's also fairness?

6            A. Yes.

7            Q. Right. You want to make sure that a command  
8 officer such as Ken MacDonald, a third generation police  
9 officer with no history of misconduct, would get an  
10 opportunity to say his side before you charged him; right?

11           A. The investigators would have to do that. It  
12 wouldn't be up to me.

13           Q. Well, you actually are in charge of the  
14 investigation, aren't you?

15           A. But I'm not the actual foot soldier.

16           Q. Right. But you would want your people to  
17 make sure that happened; right?

18           A. They would have to be accountable for the  
19 integrity of the investigation. It would have to be  
20 something that they need to do, and by the way, not every  
21 circumstance can be factored into an absolute.

22           Q. Getting to the point, you would expect that  
23 Ken MacDonald, as well as Inspector Alison Jevons, would  
24 have been afforded an opportunity by your investigators  
25 carrying on an investigation under your office, you would

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1 expect them to be afforded an opportunity to submit duty  
2 reports to tell their side of the story; right?

3 A. In normal circumstances, yes.

4 Q. Was there anything exceptional about these  
5 circumstances?

6 A. I don't know what the circumstances were of  
7 the investigation.

8 Q. Well, I thought this was the first time you  
9 knew of commissioned officers ever being charged. Was it?

10 A. I knew that there were some complications  
11 with the investigation, missing reports, those kinds of  
12 issues, but the conduct of the investigation I had no role  
13 in whatsoever. I directed nobody. I ordered nobody. I  
14 basically received a finding eventually and a few updates  
15 along the way.

16 Q. The reason I ask you that about the  
17 entitlement to say their side of the story is I'm showing  
18 you a Summary Report prepared by Superintendent Van Zant  
19 that outlines the dates that the Duty Reports were  
20 submitted by Superintendent MacDonald and Inspector Jevons.  
21 But first with Superintendent MacDonald, you see the  
22 reference on February 8th, 2007?

23 A. Yes.

24 Q. Duty Report?

25 A. Hm-hmm, yes.

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1 Q. Superintendent MacDonald submitted his Duty  
2 Report on February 19th?

3 A. Right.

4 Q. That seems to be 26 days after, after Deputy  
5 Commissioner Lewis concluded that charges would be laid  
6 against MacDonald. Does that seem fair to you?

7 MR. GOVER: Well, with respect, I do have an  
8 objection to this line of inquiry and it's my  
9 respectful submission, Mr. Adjudicator, that we  
10 have really lost it at this line of inquiry.  
11 You've heard the Commissioner's evidence about  
12 who was responsible for the decision to lay  
13 charges.

14 MR. FALCONER: I'll move on because I'm not going  
15 to concede his point but it's not worth sucking  
16 up the time right now. So I'm just going to move  
17 on.

18 THE ADJUDICATOR: All right.

19 MR. GOVER: I'm happy with that.

20 THE ADJUDICATOR: Thank you.

21 MR. FALCONER: I'm not -- you heard what I had to  
22 say.

23 BY MR. FALCONER:

24 Q. In terms of this process, the process you  
25 contemplate, it's a process where you assess the  
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1 performance of somebody or assess their guilt or innocence  
2 after they get a chance to tell their side of the story;  
3 right?

4            A. After I receive the Investigative Report.

5            Q. That includes their side of the story if they  
6 want to tell it?

7            A. It's up to the investigators to determine  
8 whether that is appropriate or not.

9            Q. Right. Now --

10           MR. GOVER: And again, I have a concern about the  
11 implication here. Are you suggesting, Mr.  
12 Falconer, that the Investigative Report did not  
13 include the Duty Reports?

14           MR. FALCONER: No, I'm suggesting that the  
15 decisions or views reached by a Deputy  
16 Commissioner, perhaps two Deputy Commissioners,  
17 were arrived at before they filed Duty Reports.  
18 Yes, I'm definitely suggesting that. That's what  
19 we heard yesterday by Deputy Commissioner Lewis.

20           MR. GOVER: Well, in that case, I renew my  
21 objection and respectfully submit that we have  
22 exhausted this line of inquiry, and I invite you,  
23 Mr. Adjudicator, to invoke s.23(2) of the  
24 *Statutory Powers Procedure Act*,  
25 "...A tribunal may reasonably limit further

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1 examination or cross-examination of a witness  
2 where it is satisfied that the examination or  
3 cross-examination has been sufficient to disclose  
4 fully and fairly all matters relevant to the  
5 issues in the proceeding..."

6 In my submission, in this particular respect you  
7 have heard the Commissioner say that he was the  
8 decision-maker.

9 MR. FALCONER: I wasn't going there and my friend  
10 elicited this from me by asking me was I saying  
11 "x" or "y". I said yes, I'm saying "x" or "y",  
12 the next thing I know --

13 THE ADJUDICATOR: Mr. Gover [*sic*] is going to  
14 move along in any event.

15 MR. FALCONER: That's right.

16 THE ADJUDICATOR: All right.

17 MR. FALCONER: He got me to say that by asking me  
18 and then he said, well, once you've said it, I  
19 would like you to be shut down.

20 THE ADJUDICATOR: Don't encourage him. All  
21 right. So just continue on, Mr. Falconer.

22 MR. FALCONER: I'm not moving. Thank you.

23 BY MR. FALCONER:

24 Q. Now, it's the same principle in employment  
25 settings, isn't it? When you're weighing allegations  
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1 against your employee, don't you do the same thing? You  
2 get the employee's side of the story? Don't you do that?

3            A. Mr. Falconer, the investigation was headed up  
4 by Deputy Commissioner Carson through the work of  
5 Superintendent Van Zant. I had no carriage, no role, gave  
6 no orders, no direction to anybody about the conduct of  
7 this investigation.

8            Q. You misunderstand my question. I said in the  
9 employment setting now, moving from the discipline  
10 investigation to the employment setting, you have a Bureau  
11 Commander, head of Professional Standards. You have heard  
12 concerns about him. You make a decision to move him out,  
13 and I ask you in the employment setting don't you have that  
14 same obligation to him to get his side of the story before  
15 you move him out?

16           A. Not necessarily always the case, no.

17           Q. In this case, didn't you have that  
18 obligation?

19           A. Well, if I did, I didn't exercise it.

20           Q. Why? Why didn't you simply sit down with  
21 your Superintendent who has no record of misconduct and say  
22 what do you say about this stuff they're saying about you?  
23 Why didn't you sit down with him?

24           A. My state of mind, sir, as I can best recall,  
25 I don't have an answer for you. I didn't do it, obviously,

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1 if that's what I didn't do. I was satisfied that the right  
2 things were being done, and to that end, that's what  
3 happened.

4            Q. So in order to allow us to move on, I may  
5 take from your answer that you simply don't have an  
6 explanation for why Ken MacDonald wasn't afforded an  
7 opportunity to address the concerns that had been expressed  
8 to you about his command; is that right?

9            A. You could be right.

10           Q. Now, you know that the public complainant,  
11 Susan Cole, she was the victim of a domestic incident;  
12 right? You know that?

13           A. She's a complainant, yes.

14           Q. You know that she was the victim of a  
15 domestic incident? Her car was beaten with a baseball bat  
16 --

17           A. Yes.

18           Q. -- by her ex-spouse?

19           A. Yes.

20           Q. And you know that that ex-spouse is a police  
21 officer?

22           A. Yes.

23           Q. He is named Alarie; right?

24           A. I don't know his name.

25           Q. All right. This public complainant had a  
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1 whole series of concerns flowing from how she was treated  
2 that night, you know that?

3            A. She had concerns, yes. She wrote letters  
4 about her concerns. I believe she expressed her concerns  
5 in those letters. I can't recall now what they were.

6            Q. And you would agree with me that a victim on  
7 a domestic incident -- leave aside if it's a police officer  
8 who is the subject of the allegations -- a victim on a  
9 domestic incident is a person whose concerns should be  
10 taken very seriously? Yes?

11           A. Always.

12           Q. Right. A domestic with a police officer  
13 where another police officer attends to investigate and the  
14 end result is the police officer accused of using the  
15 baseball bat stays in the home and the victim is moved out  
16 of the home that night, that's not -- that's not the way we  
17 do things, is it?

18           A. I have no knowledge of circumstances. I  
19 can't answer that.

20           Q. You didn't make inquiries? I thought this is  
21 the first time you had two commissioned officers get  
22 charged. These are the underlying circumstances to the  
23 case they were managing. You don't know about them?

24           A. Well, I know about the Investigative Report  
25 that investigated these issues thoroughly.

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1 Q. You do?

2 A. Yeah.

3 Q. All right. Well --

4 A. You just produced it here.

5 Q. And it talked about the fact -- it talked  
6 about, among other things, the fact that Susan Cole wasn't  
7 brought back to her home that night, that she had to find  
8 somewhere else to stay?

9 A. I don't -- I don't recall those particulars.

10 Q. You would agree with me -- well, Inspector  
11 Messham testified to this from Professional Standards, that  
12 the normal course is for an accused person, the person  
13 alleged to have caused the domestic incident, the normal  
14 course is a charge and an arrest or an arrest and a charge,  
15 there is conditions put on the person that's charged, and  
16 the victim is allowed to stay in the home, the conditions  
17 being to stay away from the victim. That's the normal  
18 course, isn't it?

19 A. If evidence, facts, and information is such  
20 that it supports that kind of activity, yes.

21 Q. If I were to tell you that, despite the 15  
22 days of hearings that we've had, including Susan Cole  
23 testifying, not a soul has been able to point to a single  
24 reason to doubt that a baseball bat was used on her car,  
25 not a soul was able to point to a single reason to doubt

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1 that, would that surprise you?

2            MR. GOVER: Well, with respect, the purpose of  
3            the abuse of process motion has not been to  
4            require you to --

5            MR. FALCONER: That's fine. I can --

6            MR. GOVER: -- adjudicate that issue, sir.

7            MR. FALCONER: -- withdraw the question and move  
8            on.

9            THE ADJUDICATOR: I agree, Mr. Gover. Thank you,  
10           Mr. Falconer.

11 BY MR. FALCONER:

12           Q. The evidence that Mr. Adjudicator has heard  
13 on this abuse of process motion includes the fact that Ms.  
14 Cole's car was damaged, that the baseball bat had materials  
15 from the trunk on it, paint chips from the trunk, and that  
16 the car had wood materials consistent with the wood from  
17 the bat. In other words, objective proof or evidence about  
18 the bat. Secondly, Mr. Adjudicator has heard that no one  
19 has made the rational allegation that Susan Cole used a  
20 baseball bat on her car herself. This was a domestic  
21 involving Officer Alarie. Do you know about these facts?

22           A. In part, yes.

23           Q. Susan Cole testifies that the only two people  
24 in your OPP that helped her were my two clients,  
25 Superintendent Ken MacDonald and Inspector Alison Jevons.

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1 Do you doubt that she said that?

2            A. No, not at all.

3            Q. So why, may I ask you, Commissioner, why  
4 wouldn't you have gone to Ken MacDonald and asked him for  
5 his side of his ongoing struggles with the OPPA before you  
6 acted on their concerns? Why not?

7            A. Well, if it relates to this case, Deputy  
8 Commissioner Carson was already immersed in all of this and  
9 I was not in a position to interfere, nor would I.

10           Q. Now, the other person -- we've gone over the  
11 E-mail of August 30th, 2006. We've looked at the OPPA.  
12 Let's talk about who else you got the concerns from. The  
13 other person you got concerns from was full-time  
14 Adjudicator Elbers; correct?

15           A. Yes.

16           Q. What information did you have about full-time  
17 Adjudicator Elbers' relationship with Ken MacDonald?

18           A. None that I recall.

19           Q. You were new on the scene; right?

20           A. Yeah.

21           Q. You had -- you had no information about an  
22 animus or problems with Adjudicator Elbers and Ken  
23 MacDonald; did you?

24           A. Absolutely none.

25           Q. Did you ask anybody about it?

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1           A. No, I did not, and his -- if I may, Your  
2 Honour?

3           THE ADJUDICATOR: Certainly, go ahead.

4           THE WITNESS: Superintendent Elbers was  
5 basically bringing issues to my attention that  
6 pertained to the unit; the timeliness of  
7 investigations, the loss of jurisdiction, and  
8 some of the other difficulties inherent to the  
9 unit. It wasn't about Superintendent MacDonald  
10 specifically.

11 BY MR. FALCONER:

12           Q. But it was a unit under Superintendent  
13 MacDonald's command?

14           A. Well, yes.

15           Q. Well, so --

16           A. And Keith Messham was in there and there were  
17 other people in there with an equal responsibility to  
18 address some of the issues that obviously were not working  
19 very well.

20           Q. But the two people you moved out first, the  
21 two people you moved out first were my clients, and you did  
22 it -- you did it in early December and late December, 2006;  
23 right?

24           A. And I explained why, yes.

25           Q. And you say that you received concerns about  
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1 the unit from Superintendent Elbers. Would you agree with  
2 me that an Adjudicator is someone to be taken seriously  
3 when they express concerns because they sit as an  
4 independent arbiter; right?

5            A. His comments to me basically were the result  
6 of feedback from other adjudicators that had dealings with  
7 the unit and he was conveying those comments on behalf of  
8 not only himself but others, as well.

9            Q. The ones that he, in fact, was the senior  
10 for? He was the full-time adjudicator, he did the hiring  
11 and allocation of these adjudicators; right?

12           A. The assignments, yes, and I'm the one that, I  
13 guess, would have authorized their acting as adjudicators.

14           Q. As the Commissioner in charge of  
15 administering the *Police Services Act* within the context of  
16 the OPP, one of your jobs is to be in charge of the  
17 discipline aspect, that is, potential investigation and  
18 charges under the *Police Services Act*; right?

19           A. Yes.

20           Q. And the adjudicative aspect; right?

21           A. Yes.

22           Q. And so, ultimately, that is your bailiwick?  
23 That is your responsibility?

24           A. Yes.

25           Q. You would expect your hearing officers to

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1 conduct themselves in a fashion that ensured that they were  
2 free of conflict of interest and free of bias; correct?

3            A. Yes.

4            Q. Because their job, their job, is to  
5 adjudicate over potential career ramifications for  
6 officers; right?

7            A. Yes.

8            Q. An adjudicator should come to any case free  
9 of involvement in the investigation, would you agree?

10           A. Yes.

11           Q. For instance, if I were to suggest to you  
12 that an adjudicator was assisting investigators on time  
13 lines for the investigation, that would cause you pause for  
14 concern; right?

15           A. No, it would not.

16           Q. It wouldn't?

17           A. No.

18           Q. All right. Let's go straight to Morris  
19 Elbers. You know that Morris Elbers called Superintendent  
20 Mary MacLachlan on March 12th, 2007 to remind her of the  
21 loss of jurisdiction date as it applied to Ken MacDonald  
22 and Alison Jevons? You know that, right?

23           A. And I would have expected him to alert us to  
24 that fact, yes.

25           Q. So let me get this right. The adjudicator  
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1 who is either going to judge a case or assign somebody to  
2 judge a case is now assisting in ensuring that charges get  
3 laid against the people that are going to be tried; is that  
4 right?

5            A. No, it's not. His role would not have been  
6 to adjudicate on this case. His role was basically to look  
7 after some administrative functions. He was not going to  
8 sit as an adjudicator on this case. That was never, ever  
9 contemplated, and as someone that I was responsible for, I  
10 would have expected him to let me know about difficulties  
11 that surfaced in his experience and his role as adjudicator  
12 or bring those issues to my attention if they were surfaced  
13 by other adjudicators. I don't see any conflict there at  
14 all.

15            Q. Let me understand you correctly and I just  
16 want to give you all the information so I can make sure I  
17 have your vision of what is proper and improper for an  
18 adjudicator to do. On March 12th, 2007, Detective  
19 Inspector Keith Messham, sitting in an office across from  
20 Superintendent Mary MacLachlan, heard Superintendent  
21 Elbers' voice over a speaker phone in MacLachlan's office.  
22 She heads Professional Standards; right?

23            A. Yes.

24            Q. He heard Superintendent Elbers say, "Take me  
25 off speaker phone and close your door." All right. Now,

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1 next about three or four minutes later after the door is  
2 closed, Mary MacLachlan comes out of her office into  
3 Messham's office and says do you know that the loss of  
4 jurisdiction date, the limitation period for laying charges  
5 against MacDonald and Jevons, is coming up on March 14th.  
6 All right. That's what we hear from Messham. Secondly,  
7 Superintendent MacLachlan has a note in her notes, 10:15  
8 a.m., 10-21. That's a telephone call; right? 10-21,  
9 that's a telephone call?

10            A. Yes.

11            Q. At 10:15 a.m. on March 12th, 10-21 from  
12 Superintendent Morris Elbers, discussion concerning some  
13 prosecutorial issues, also advised me that he believed the  
14 loss of jurisdiction on the Superintendent MacDonald and  
15 Inspector Alison Jevons investigation being conducted by  
16 CIB was on 14 March, 2007. You're saying that that was  
17 proper for him to do that as an adjudicator?

18            A. Absolutely, but he wasn't adjudicating this  
19 case.

20            Q. Did you know that he provided a statement to  
21 investigators about Ken MacDonald and Alison Jevons?

22            A. No, I'm not aware of that.

23            Q. So in addition to being the tickler for the  
24 investigators, he was also a witness for the prosecution?  
25 Did you know that?

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1            A. He also had fiduciary duties and  
2 responsibilities as a member, a senior member, of this  
3 organization to ensure that we followed due process.

4            Q. Does due process include him presiding over  
5 first appearances by the officers?

6            A. As long as he didn't try the matter, yes.

7            Q. All right. Let's back up now so I can get  
8 this right. On -- I'll give you the dates -- June 13th,  
9 2007 on the first appearance of the first time you know of  
10 that commissioned officers are charged, when they attended  
11 in this very hearing room, the adjudicator presiding in  
12 front of them was Morris Elbers who was a witness in the  
13 prosecution case against them, and you are trying to tell  
14 Mr. Adjudicator that, in your view, that was proper;  
15 correct?

16           A. He wasn't adjudicating the case. He was  
17 following an administrative requirement to put the case  
18 over until we found someone that could, in fact, step in.

19           Q. It's your evidence that because he wasn't the  
20 trial judge, he was basically a first appearance judge, it  
21 was appropriate; correct?

22           A. I believed it was, yes.

23           Q. He again appeared as the appearance judge on  
24 July 30th, 2007 when I served a motion for him to recuse  
25 himself. Do you take the position that when he presided on  
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1 July 30th, 2007, that was appropriate?

2            A. It all depends, Mr. Falconer, on what was  
3 taking place that day. It would have been my view that he  
4 would never sit on any decisions to be made with regards to  
5 the case other than for remand purposes and just to  
6 facilitate a remand.

7            Q. Superintendent Elbers has provided a  
8 statement to the prosecution critical of Mr. MacDonald. He  
9 has contacted professional services to remind them of the  
10 limitation date in charging my clients, and he is now  
11 presiding over the first appearances of my clients, and  
12 it's your evidence that this was proper; correct?

13           A. He's not presiding in the same context as  
14 having to weigh evidence and make decisions about the  
15 conduct of the case or the disposition of the case. It was  
16 just a technical, administrative requirement. I see that  
17 as not a conflict at all.

18           Q. On March 20th, 2007, there was an E-mail  
19 exchange between you and Superintendent Elbers to the  
20 effect that Superintendent Elbers wanted you to know that  
21 he was going ahead with the selection of the adjudicator as  
22 you had requested; right?

23           A. That's correct.

24           Q. So in addition to being a witness to the  
25 prosecution, being a tickler system for the investigators,

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1 and presiding at first appearances, he was also assisting  
2 you in selecting the new adjudicator; correct?

3            A. Wrong, he was not a tickler to anything, Mr.  
4 Falconer. That's very disrespectful, I might add. He was  
5 fulfilling a responsibility that was assigned to him. He  
6 was tickling nothing.

7            Q. Going back again, in addition to being a  
8 witness for the prosecution, providing the limitation dates  
9 to Professional Standards, presiding over first appearances  
10 for the officers, he was also assisting you in selecting  
11 the new adjudicator; correct?

12           A. That was part of his functions, yes.

13           Q. And that was proper; correct?

14           A. Yes.

15           Q. It's proper for an adjudicator who is a  
16 witness to the prosecution to be involved in selecting the  
17 new adjudicator; correct?

18           A. But I still would have had to sign off. It  
19 was up to him to recommend to me.

20           Q. Does appearance come into this at all? Is  
21 there any issue about appearance of impartiality? Is that  
22 important?

23           A. Nobody was trying anybody. There was no  
24 trying of the facts. There was no decisions being made.  
25 Remands were on agreement, as I understand it. He was

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1 facilitating a technical administrative process.

2            Q.    It's your belief that Ken MacDonald and  
3 Alison Jevons agreed to have Superintendent Elbers work  
4 with Professional Standards on the limitation dates for  
5 their charges?    Is that your belief?

6            MR. GOVER:    That's not a fair question, with  
7 respect.

8            THE ADJUDICATOR:    Can you rephrase it in a  
9 certain way?

10 BY MR. FALCONER:

11            Q.    Sure.    You don't actually believe that Ken  
12 MacDonald or Alison Jevons agreed to Superintendent Elbers  
13 assisting Professional Standards with the limitation dates  
14 against them, do you?    Do you think they agreed to that?

15            A.    I have no knowledge that they would one way  
16 or the other.

17            Q.    They didn't agree, I put it to you, sir.

18            A.    That's fine.

19            Q.    They did not agree to that, nor did they  
20 agree to Superintendent Elbers presiding over their first  
21 appearances or their second appearances.

22            A.    I have no knowledge of that.

23            Q.    Are you saying that?

24            A.    I have no knowledge of that.

25            Q.    Superintendent Elbers was actually in charge  
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1 of paying Superintendent Tweedy; right? That was part of  
2 his function was to develop a contract with Superintendent  
3 Tweedy; right?

4            A. As per my instructions.

5            Q. The witness for the prosecution is involved  
6 in the compensation of the adjudicator; right?

7            A. It's no big deal, Mr. Falconer.

8            Q. No, it's just the career of a police officer.  
9 It's no big deal at all.

10           MR. GOVER: Well, please, with respect.

11           THE ADJUDICATOR: I agree, I agree.

12           MR. FALCONER: That's fine.

13           THE ADJUDICATOR: All right.

14 BY MR. FALCONER:

15           Q. Now, you say Ken MacDonald, you were helping  
16 him out, right, by moving him out of Professional  
17 Standards?

18           A. I felt that then and I feel it today.

19           Q. Let me ask you something. If you were  
20 helping him out, why didn't you ask him if he wanted to go?

21           A. I don't think we had that many choices at  
22 that time, Mr. Falconer.

23           Q. You didn't have a choice to, (a), canvass  
24 your concerns with him; or (b), ask him if he wanted to  
25 leave? You didn't have a choice?

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1           A. I felt that I had to do something and I did  
2 what I did.

3           Q. Did you move Mary MacLachlan out?

4           A. I don't understand the question.

5           Q. Well, you said you didn't have a choice about  
6 moving Ken MacDonald out. It was your evidence that you  
7 didn't have a choice.

8           A. I felt I didn't have a choice, yes.

9           Q. And I take it and it's your evidence that it  
10 wasn't some form of punishment of Ken MacDonald; right?

11          A. Absolutely no punishment at all.

12          Q. You don't have an explanation for why you  
13 didn't run the concerns by him; right?

14          A. It could have been a timing issue, Mr.  
15 Falconer, but I did sit down for quite a lengthy period of  
16 time with him in Niagara Falls. It may have been not a  
17 timely discussion, but it was in-depth and I thought it was  
18 a good discussion about all these issues.

19          Q. After he was moved out; right?

20          A. Well, like I say, it may have been the timing  
21 and so forth did not allow me to do it sooner.

22          Q. And at that discussion he told you he didn't  
23 want to go to traffic; right?

24          A. I don't remember that. He may have done it.  
25 He may have said that.

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1            Q. Now, it's your evidence basically that it was  
2 the environment, you had to do something to move out Ken  
3 MacDonald? It wasn't about targeting him; right?

4            A. That's absolutely right. Not the  
5 environment, the unit and the situation in the unit.

6            Q. The reason I ask you that is because I asked  
7 the new bureau commander about her relationship with the  
8 OPPA. In other words, Mary MacLachlan took over in  
9 January, 2007, after Ken MacDonald and I asked her her  
10 experience with the OPPA. I'm going to read to you from  
11 page 132 of the transcript of July 18th, and if you would  
12 like, I can read to you and put the transcript in front of  
13 you and I'll read over your shoulder. All right. Page 132  
14 line 18 -- I'm sorry, line 8, page 132 line 8. This is  
15 Superintendent MacLachlan talking about her experience now.  
16 "Question: All right." -- and this is Julian Falconer  
17 talking,

18            "...I expect when Inspector Messham is called upon to  
19 testify, Inspector Keith Messham, that he will testify  
20 that on several occasions, two or three occasions that  
21 he can think of, you mentioned that you wouldn't be  
22 surprised if you ended up in the same shoes as Ken  
23 MacDonald and being the subject of charges at the  
24 instance of the President of the OPPA, Karl Walsh.  
25            Might you have said that?

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1 Answer: Probably not charges, but probably subject of  
2 a complaint.

3 Question: I appreciate the clarification. Could you  
4 assist Mr. Adjudicator why you might have said that?

5 Answer: I feel that I have probably been targeted by  
6 Karl Walsh and it's not an easy job as Bureau  
7 Commander. We had one scenario where I think at first  
8 our relationship was amicable. I tried to speak with  
9 Karl Walsh. Karl has a way about him that sometimes  
10 may be very abrasive, and during the course of our  
11 meeting I brought one of my inspectors with me to  
12 introduce him to Karl, and Your Honour, I was  
13 surprised that he actually had two other directors  
14 there with me. So he was -- I felt he was going to  
15 blind-side me with two other individuals, and when I  
16 arrived in the room, I was literally surprised because  
17 I was just going to introduce Bob and then he was  
18 going to go and I thought we would have a congenial  
19 meeting. But it just became a series of almost  
20 complaints that they were raising and to the point  
21 where I also had to talk to Karl about a personal  
22 issue that related only to him, and I'm not sure  
23 whether, Your Honour, if I can get into that now.

24 Question: I don't need you to get into that.

25 Answer: But he was not happy about it, and I said I  
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1 will seek a legal opinion and I'll get back to him.  
2 As a result of that, I got a very caustic E-mail  
3 threatening to sue me that it was very inappropriate  
4 for me to have done what I did, but I was following  
5 process and then I didn't hear anything and I tried to  
6 call Karl on a number of occasions with respect to  
7 some issues and Karl never returned my calls  
8 subsequent to that. So I had very little dealings  
9 with him and I had requested that both inspectors in  
10 the unit approach either Karl or one of the other  
11 directors to try and build a relationship because it  
12 was obvious that Karl just didn't want to talk to me.  
13 And at that stage, I received an E-mail, and it wasn't  
14 a very pleasant E-mail, that Karl had forwarded one to  
15 another individual pretty well saying that, as a  
16 result of the last meeting, this was five months later  
17 after our meeting, that as a result of that meeting,  
18 that pretty well I was banned from the OPP Association  
19 building..."

20 End of quote page 134. Did you know that Superintendent  
21 MacLachlan was banned by Karl Walsh -- Karl Walsh describes  
22 it in his own words as a decree -- was banned by decree  
23 from the OPPA building? Did you know that?

24 A. I'm not aware of it, no.

25 Q. You're not aware of it?

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1            A.    But I -- these things happen.

2            Q.    I ask you that because, obviously, there is  
3 some concern Mary MacLachlan, the current commander  
4 expresses, about her being targeted by the head of the  
5 Association.

6            A.    Well, if she is being targeted, I'm not aware  
7 of it, nor am I allowing it to happen. I have intervened  
8 to deal with some of these problems. There is always  
9 conflict between associations, as I mentioned earlier, Mr.  
10 Falconer, and administration, especially Professional  
11 Standards or those kinds of units by virtue of the  
12 positions that people take. I have been there. I don't  
13 see this as any extraordinary situation. I think it's more  
14 the ordinary.

15           Q.    So when the OPPA came to you about Ken  
16 MacDonald, why didn't he get that benefit? Why did you  
17 ship him out without talking to him?

18           A.    I have to go back and just state for the  
19 record that the issue was not Karl versus Ken MacDonald.  
20 There was another aspect of this whole thing involving the  
21 domestic situation, the domestic assault, the investigation  
22 that followed. There is a whole complexity of issues. It  
23 isn't the same.

24           Q.    The domestic assault complainant praises Ken  
25 MacDonald and Alison Jevons. She doesn't have a problem

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1 with them. So it couldn't be that the public complainant  
2 had a problem.

3            A. Well, the Ontario Civilian Commission on  
4 Policing had a serious problem with that whole aspect, and  
5 that's why they directed that the matter be re-  
6 investigated. So what can I say?

7            Q. Are you suggesting, sir, that you worked on  
8 the premise that the Ontario Civilian Commission on Police  
9 Services directed an investigation of Superintendent Ken  
10 MacDonald and Inspector Alison Jevons? Mr. Gover, please.  
11 Are you suggesting that?

12           A. I'm suggesting that that was a very serious  
13 aspect of this whole case.

14           Q. Right but --

15           A. That I could never ignore and about which I  
16 needed to ensure that the proper investigation took place.

17           Q. And you were under the impression at that  
18 time in October, 2006 to March, 2007, you were under the  
19 impression at that time, as you are now, the governing  
20 body, the Ontario Civilian Commission on Police Services,  
21 had directed that Ken MacDonald and Alison Jevons be  
22 investigated for their work on the Zulinski matter;  
23 correct?

24           A. As I recall, they directed that the matter be  
25 re-investigated. I don't think -- I can't recall if the  
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1 order, if you will, the decree, specified people, named  
2 people, named persons.

3            Q. In your view, that order included Ken  
4 MacDonald and Alison Jevons; correct?

5            A. It included -- it included whoever was  
6 involved in that investigation.

7            Q. And it was on that basis -- it was on that  
8 basis that you thought the charges should go ahead on Ken  
9 MacDonald and Alison Jevons?

10           A. No --

11           MR. FALCONER: Be careful, Mr. Gover. If you're  
12 going to say anything, please ask the witness to  
13 leave the room.

14           MR. GOVER: I will ask the witness to leave the  
15 room.

16           THE ADJUDICATOR: All right. Commissioner.

17           MR. GOVER: Thank you.

18 --- Witness leaves hearing room at 4:29 p.m.

19           THE ADJUDICATOR: Yes, Mr. Gover.

20           MR. GOVER: Mr. Adjudicator, fairness dictates  
21 that the direction from the Ontario Civilian  
22 Commission on Police Services be placed before  
23 the witness and that this not turn into a series  
24 of abstract questions without showing the witness  
25 something that this obviously pertains to. And  
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1 in my submission, that will result in evidence  
2 that will be of assistance to you, rather than  
3 continuing along this line of inquiry without any  
4 concrete foundation.

5 MR. FALCONER: Mr. Adjudicator, my friend has  
6 made the point through this witness that this is  
7 the first time commissioned officers are being  
8 prosecuted. He has made the point that this  
9 Commissioner personally involved himself. Well,  
10 we know he did. He has made the point that this  
11 Commissioner personally signed off. We know he  
12 did. The Commissioner has told us how much of an  
13 interest he took, although he assigned jobs to  
14 investigators. Now we find out that he was  
15 operating under a false premise. He has  
16 testified that he thinks OCCPS directed, among  
17 other things, that my clients be investigated and  
18 that --

19 MR. GOVER: Well, he hasn't said that, with  
20 respect.

21 MR. FALCONER: And that is simply wrong, as we  
22 know. He said -- his evidence was that OCCPS  
23 directed that there be a re-investigation of all  
24 people involved in this matter and that would  
25 have included your clients. That was his

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1 evidence. Well, we know that that's completely  
2 wrong, that never happened. OCCPS has never  
3 expressed a scintilla of concern about my  
4 clients, but he is under the false impression  
5 they did, and I heard him in-chief keep repeating  
6 over and again this was an OCCPS issue, this was  
7 very serious, I had to take it seriously because  
8 OCCPS had expressed concern, this was an OCCPS  
9 issue. Mr. Gover now rises and says, well, you  
10 should put some documents in front of him so he  
11 can realize he had blundered. Now, I'm sorry,  
12 with all due respect to the Commissioner, if he  
13 has been operating under a false premise, then it  
14 is absolutely essential we bring that out.

15 MR. GOVER: And my position is simply let's be  
16 fair to the witness and deal with this in a  
17 direct fashion, and that involves putting the  
18 direction before the witness, and the evidence as  
19 I heard it was he was under the impression at the  
20 time that OCCPS had directed that the matter be  
21 re-investigated. And in my submission, in order  
22 to assist you in understanding this, Mr.  
23 Adjudicator, we really need to make this  
24 concrete, and in my view, that would be the only  
25 fair thing to do to a witness at 4:30 p.m. toward

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1            the conclusion of a very long day for all  
2            concerned.

3            THE ADJUDICATOR: The evidence I heard from the  
4            Commissioner was that OCCPS directed that Ken  
5            MacDonald and Jevons be investigated and that it  
6            was his impression that it included all in the  
7            investigation of this. Now, that's the evidence  
8            I heard. So I'm going to have the Commissioner  
9            return. I'm going to allow Mr. Falconer to  
10           continue his cross-examination on this point.

11           MR. FALCONER: Thank you.

12 --- Witness returns at 4:32 p.m.

13           THE ADJUDICATOR: So still under oath,  
14           Commissioner.

15           THE WITNESS: Thank you, Your Honour.

16 BY MR. FALCONER:

17           Q. The bottom line to why you were giving the  
18 evidence you just finished giving to Mr. Adjudicator is  
19 that you wanted to bring home that it wasn't just Karl  
20 Walsh who had a concern about Ken MacDonald and Alison  
21 Jevons, among others? It wasn't just Karl Walsh. It was  
22 OCCPS, as well; correct?

23           A. That was part of it, yes.

24           Q. And so I guess the opposite would be true,  
25 right, if OCCPS had never, ever, ever expressed a concern

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1 about Ken MacDonald and Alison Jevons, if they had never,  
2 ever expressed a concern about them, you would simply have  
3 been operating on a mistaken premise; correct?

4            A. Well, the concern, as I recall, was about a  
5 particular investigation. I don't think the specific  
6 people were named, but the facts being what they were, Mr.  
7 Falconer, I can't back-track and guess otherwise.

8            Q. I want to lead on a specific issue that I  
9 want to get your evidence on and be clear. You called  
10 Chief Superintendent Grodzinski's notes "cheat notes", C-H-  
11 E-A-T; correct?

12           A. Yes.

13           Q. I thought I heard "sheet notes" and that's  
14 why I asked you to repeat it. And the word "cheat"  
15 suggests dishonesty, would you agree?

16           A. It could be interpreted as such, yes.

17           Q. Well, you pride yourself on being a straight-  
18 talker. You're saying he took cheat notes to be dishonest;  
19 right?

20           A. He made notes and didn't disclose them,  
21 didn't express concern about them, didn't use them to  
22 effect an outcome other than some nine, ten months later,  
23 whatever it is. If he was that concerned about the  
24 content, he I think had a duty to deal with the issue, and  
25 why would he not confront me if he was so concerned about

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1 it.

2            Q.    You don't appreciate at all the power  
3 imbalance that would prevent him from confronting you, do  
4 you?

5            A.    Absolutely no power imbalance at all when it  
6 comes to doing the right thing for the right reasons.

7            THE ADJUDICATOR:    Have we been this way before?

8            MR. FALCONER:    No.

9            THE ADJUDICATOR:    No, all right. I don't know  
10 where you're going, but I've heard a lot of this  
11 imbalance of power. I know that.

12           MR. FALCONER:    That's right.

13 BY MR. FALCONER:

14           Q.    You learned between January 3rd and January  
15 5th, 2008 about the notes; correct?

16           A.    I believe I did around the second week of  
17 January or thereabouts.

18           Q.    I'm going to put it to you that you learned  
19 between January 3rd and January 5th, 2008, because you  
20 actually met with Superintendent Van Zant to receive a  
21 folder on Saturday, January 5th, 2008; isn't that right?

22           A.    Yeah, it sounds right.

23           THE ADJUDICATOR:    Is this the point where we were  
24 going to exclude the Superintendent?

25           MR. FALCONER:    Yes, thank you.

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1            THE ADJUDICATOR:    So Superintendent Van Zant,  
2            would you please leave, then, for a moment?  
3            Thank you.    We'll let you know when you can come  
4            back.

5 --- Supt. Van Zant leaves the hearing room at 4:35 p.m.

6            MR. FALCONER:    There is a lettered exhibit that  
7            is a typed version of the Van Zant notes.    I'm  
8            wondering if you have it there.    I think it's "D"  
9            for Doris.

10          THE ADJUDICATOR:    "D"?

11          MR. FALCONER:    Yes.

12          THE ADJUDICATOR:    All right.

13          MR. FALCONER:    "D" for Doris.    I have it here,  
14          and may I use yours for a moment?

15          THE ADJUDICATOR:    Certainly.

16          MR. FALCONER:    Thank you.    I'm going to read you  
17          Superintendent Van Zant's account of the meeting.

18            I understand that Mr. Gover was able to render  
19            legible words that I could not, so I think we  
20            have a switch to make in the typed version of  
21            Superintendent Van Zant's notes which I'm happy  
22            to take advantage of.    Is it ready?    All right.

23            Thank you.

24 BY MR. FALCONER:

25            Q.    So I'm going to read to you the description

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1 of the meeting. It's just one paragraph. If you would  
2 like, I can have it in front of you when I read it.

3            A. No, go ahead, sir.

4            Q. Okay. This is the meeting that  
5 Superintendent Van Zant says he said with you, it's from  
6 his notes,

7            "...11:30, attend at Molson Park Parkway southwest  
8 corner of Molson Park Drive and Highway 400 in Kelsey  
9 Restaurant lot. 11:58 entered Kelsey Restaurant,  
10 await Commissioner Fantino. 12:08 Commissioner  
11 Fantino joins writer at Kelsey's Restaurant. Writer  
12 presents a very brief overview of preparation of  
13 defence named witnesses on behalf of legal counsel,  
14 Mr. Brian Gover and Mr. Owen Rees, that prep  
15 interviews conducted to ensure witnesses not caught  
16 off guard during examination in hearing. Writer  
17 advises that upon receiving E-mail from Commissioner  
18 Fantino on 4th of January, 2008, noted concerns and  
19 requesting information. Writer had prepared an  
20 information package regarding information received by  
21 Rees from a telephone conversation the 3rd of January,  
22 '08 late in the day and interview recorded by, typed,  
23 Detective Sergeant Chalk on 4th of January, '08 and  
24 other related documents. This information had been  
25 requested by Commissioner Fantino in order to

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1 appropriately address the serious allegations of  
2 defence counsel in the MacDonald and Jevons PSA  
3 matter. Writer advises Commissioner Fantino that  
4 writer and Rees and Gover support the Commissioner's  
5 request and understood his concerns as no context was  
6 provided by counsel when forwarding questions  
7 requesting a response. Writer presents a brown folder  
8 with information package on Grodzinski's information  
9 as prepared by Detective Sergeant Chalk. Information  
10 package contained Rees notes from conversation with  
11 Chief Superintendent Grodzinski, Grodzinski's notes  
12 and E-mails, typed interview of Grodzinski obtained  
13 from Chalk on 4th of January, '08, and motions  
14 presented by Falconer for the upcoming hearing.  
15 General conversation with Commissioner Fantino on each  
16 other policing experiences over the years and the  
17 importance of those experiences. Concluded meeting  
18 lunch 2:15..."

19 Are the notes of Superintendent Mark Van Zant accurate?

20 A. Yes, I believe they are.

21 MR. FALCONER: May we file this now as a numbered  
22 exhibit, please?

23 THE ADJUDICATOR: So Mr. Falconer Exhibit 59?

24 MR. GOVER: Yes, I'm content with that. Thank  
25 you.

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1                    THE ADJUDICATOR: Thank you.

2                    EXHIBIT NO. 59: Page 110 of Superintendent Van

3                    Zant's notes from January 5, 2008.

4 BY MR. FALCONER:

5                    Q. You met Superintendent Van Zant in a Kelsey's

6 to get a package on Grodzinski; correct?

7                    A. On matters relating to what had unfolded,

8 yes.

9                    Q. And that package included the Grodzinski

10 notes; correct?

11                   A. Yes, sir, I believe so.

12                   Q. That package included the execution

13 statement; correct?

14                   A. I believe so, yes.

15                   Q. On the 5th of January, Saturday, you became

16 intimately familiar, you became directly familiar with the

17 fact that Chief Superintendent Grodzinski had prepared what

18 you viewed as cheat notes; correct?

19                   A. Out of context, yes.

20                   Q. Well, I'm not quoting you out of context.

21 You said they were cheat notes.

22                   A. Yes, that's why I referred to them as cheat

23 notes. They were out of context.

24                   Q. Fair enough. So on --

25                   A. And not disclosed for some nine months later.

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1            Q.    Right.  Now, Deputy Commissioner Lewis  
2 described you as "upset" about Grodzinski's actions;  
3 correct?

4            MR. GOVER:  Well, could we put that in context,  
5 please, with respect.

6            THE ADJUDICATOR:  Yes.

7            MR. FALCONER:  Well, he said the Commissioner was  
8 upset.

9            MR. GOVER:  But put a time on it, please.

10           MR. FALCONER:  That as of the morning of January  
11 8th, 2008, the Commissioner was upset.  That's  
12 what he said.

13           MR. GOVER:  That's not my note of the evidence,  
14 Mr. Adjudicator.

15 BY MR. FALCONER:

16           Q.    Let me back up.  It's all right.  We'll go  
17 another place and we'll return to it later when I have the  
18 transcript.  Commissioner, Deputy Commissioner Lewis also  
19 testified that, upon learning of what you call these cheat  
20 notes, he, Deputy Commissioner Lewis, was disappointed,  
21 frustrated, and mortified at Chief Superintendent  
22 Grodzinski.  Did you share his feelings?

23           A.    I wasn't mortified.  I was disappointed, in  
24 somewhat disbelief, felt unable to understand the  
25 motivation, also concluded that it must be some kind of a  
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1 grudge beef for him not getting promoted or elevated to  
2 acting position. I just couldn't put -- I couldn't  
3 pinpoint the rationale.

4            Q. Fair to say you felt burnt?

5            A. Oh, I felt very disappointed. I didn't feel  
6 burned. I felt to me it was inconsequential that these  
7 notes had surfaced. There were other people there,  
8 obviously. I felt disappointed that he would be the one  
9 person that I thought and believed, as I indicated earlier,  
10 was very committed to the future of the organization, the  
11 direction we were taking. Very disappointed.

12           Q. That note by Superintendent Van Zant also  
13 reflects communications between Mr. Gover, Mr. Rees,  
14 Superintendent Van Zant, and you; correct?

15           A. Yes, it does.

16           Q. So there is no doubt that you knew that the  
17 matter was proceeding before Superintendent Tweedy on the  
18 Monday morning; correct?

19           A. I don't know if I knew that, sir.

20           Q. You were the subject of a motion for a  
21 summons to have you testify on Monday.

22           A. Well, it could be. I can't deny it if that's  
23 what it is.

24           Q. You instructed Mr. Gover to oppose you being  
25 summonsed to court before Superintendent Tweedy; correct?

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1            A.    Yes.

2            Q.    And you knew that was going on downstairs in  
3 this very hearing room on the morning of January 7th, 2008;  
4 correct?

5            A.    Yes.

6            Q.    And you knew that Chief Superintendent  
7 Grodzinski's notes figured significantly in the proceedings  
8 going on that day; correct?

9            A.    I thought it was a diversion, deflecting,  
10 creating a smoke screen, and I felt that it was a waste of  
11 time as it relates to the actual matters before the  
12 Tribunal, the Notice of Hearing and the charges alleged.

13           Q.    You certainly didn't believe it was a basis  
14 to have you testify; correct?

15           A.    I felt that it was a waste of time to create  
16 this smoke screen, a waste of taxpayer money. I felt very  
17 strongly that that was a side-bar issue.

18           Q.    And you believed that the notes had been  
19 placed in the hands of a dishonest lawyer, me, who was  
20 going to use it against you; correct?

21           A.    I never said that.

22           Q.    You called me dishonest this morning, sir.  
23 That's what you said.

24           A.    I said that the allegations you were making  
25 are dishonest.

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1            THE ADJUDICATOR:    Just a moment.    I did not pick  
2            up that from the Commissioner.    Like I know the  
3            word "dishonest" was used, but it was not used in  
4            the context of referring to you, Mr. Falconer.    I  
5            reviewed my notes at the break and I did not pick  
6            up that.

7            MR. FALCONER:    Fair enough, then I'll move on.

8            THE ADJUDICATOR:    Yes, thank you.

9 BY MR. FALCONER:

10            Q.    Commissioner, you knew the notes had been put  
11 in the hands of counsel and you expected the notes would be  
12 used, as you put it, as a smoke screen; correct?

13            A.    I still believe that.

14            Q.    And so on the 7th of January, 2008, a Monday  
15 two days after the Kelsey's meeting, you couldn't have been  
16 happier with Grodzinski; am I right?    Like it's not as if  
17 you felt that he had done right between the Saturday and  
18 the Monday, am I right?

19            A.    I was disappointed, trying to figure out the  
20 reasons why.    No, I wasn't happy.

21            Q.    Proceedings went over the course of the whole  
22 day where we fought over the entitlement of the subject  
23 officers to have you as a witness.    You knew that was going  
24 on; right?

25            A.    I knew that there were issues being argued.

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1 I don't know specifically what, in fact, was argued.

2            Q. You knew that the Grodzinski notes were being  
3 discussed in court on Monday, January 7th; right?

4            A. I knew they were being discussed. I can't  
5 pinpoint the date or other circumstances, yes.

6            Q. Well, on the Saturday, we just went over Van  
7 Zant's notes, and I'm sure this is just a bit of a  
8 disconnect in terms of communication. The previous  
9 Saturday, January 5th, you were meeting with him --

10           A. Yes.

11           Q. -- and receiving the package because you knew  
12 allegations were being made in a motion; right?

13           A. Yes.

14           Q. And you knew it was being argued on the  
15 Monday; right?

16           A. That week, yes.

17           Q. Yes. You were upstairs in your office;  
18 right?

19           A. I don't have that recall, sir.

20           Q. You've already testified, you told Mr.  
21 Adjudicator under oath a couple of hours ago, that prior to  
22 Superintendent Tweedy recusing himself the following  
23 Tuesday morning, the next morning, before he did it he  
24 advised you he was going to do it; right?

25           A. I believe he did, yes, and I agreed with him.

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1            Q.    And he could have, and no doubt did tell you  
2 about that the Monday evening because he heard proceedings  
3 all day Monday, so he couldn't have talked to you Monday;  
4 right? I don't want to confuse you on this. I want to be  
5 clear on time lines. The Monday is the January 7th when he  
6 hears the argument, so he didn't talk to you during the  
7 day, did he?

8            A.    No.

9            Q.    Right. Now, he recused himself first thing  
10 Tuesday morning the next day. Okay. That's what the  
11 transcript shows. The exhibit shows that. Okay?

12          A.    Yes.

13          Q.    That's the 8th, so he must have talked to you  
14 the Monday night; is that fair?

15          A.    I'm not even too clear, sir, as to whether he  
16 actually spoke with me or whether it was counsel. I became  
17 aware that he was recusing himself.

18          Q.    Are you saying that Mr. Gover had information  
19 that Superintendent Tweedy was going to recuse himself?

20          A.    I believe I may have heard it from someone,  
21 but I can't recall if it was Superintendent Tweedy that  
22 called me or not. I can't tell you. I don't know.

23          Q.    Fair enough. Either way, you knew?

24          A.    I knew and I agreed with him.

25          Q.    Now, I have here a note of Deputy

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1 Commissioner Lewis 0700 on January 8th, 2008. Can you take  
2 a look at this note? It's a single page note. Has this  
3 note been made an exhibit? I believe it was. I'm almost  
4 positive in the recent batch. It's a single page.

5            THE ADJUDICATOR: I think I've seen it somewhere.

6            MR. FALCONER: Yes.

7            MR. GOVER: It's Exhibit 52 and you will recall  
8 that when it was filed I made the point that the  
9 testimony was -- or the evidence, rather, was the  
10 testimony of Deputy Commissioner Lewis, but that  
11 this was a useful reference for us to future  
12 purposes.

13           THE ADJUDICATOR: Yes, thank you. I have it.

14 BY MR. FALCONER:

15           Q. On the morning of January 8th, 2008, you can  
16 tell -- you've seen Deputy Commissioner Lewis' handwriting  
17 before; right?

18           A. Yes.

19           Q. He records the following: "Tele-conference  
20 Hawkes, Beechey, and Fantino." Do you see that?

21           A. Yes.

22           Q. Now, he describes this as a Commissioner's  
23 Committee meeting. Do you describe it that way?

24           A. A tele-conference, yes.

25           Q. But was it a Commissioner's Committee

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1 meeting?

2            A. No, it wasn't.

3            Q. All right. And that explains why when we  
4 asked for a search of all Commissioner's Committee  
5 meetings, this never showed up; correct?

6            A. I suppose so, yeah.

7            Q. He described it as a -- this is Deputy  
8 Commissioner Chris Lewis who testified yesterday. He  
9 described it as an ad hoc Commissioner's Committee meeting.

10 Is the word "ad hoc" accurate?

11            A. Probably.

12            Q. "0700 Frank Chin review H/R BFSO IT." Now,  
13 that's all matters not relevant to these proceedings;  
14 correct?

15            A. That's correct.

16            Q. Then he says, "Put written script/rationale  
17 together Frank Chin." All of that first four or five lines  
18 aren't relevant; correct?

19            A. That's correct.

20            Q. On the telephone conference was Deputy  
21 Commissioner Hawkes, Deputy Commissioner Beechey and  
22 yourself, as well as Deputy Commissioner Lewis; right?

23            A. Yes, sir.

24            Q. The next line says the following, and this is  
25 relevant, quote, "Announce FSB to traffic." What is FSB?

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1            A. I'm sorry, sir, I don't know.

2            Q. Could it be Field Services Bureau?

3            A. I don't know.

4            Q. Field Services Bureau to traffic, and that's  
5 to be accountable to traffic, all right? Then the next  
6 line says "PSB to IOC". Do you see that?

7            A. Yes.

8            Q. Professional Standards to Investigations and  
9 Organized Crime, do you see that?

10           A. Yes, I do.

11           Q. It's the next line I want to draw your  
12 attention to, "Grodzinski NOW to Northeast Region". "Now"  
13 has block letters and is underlined. Do you see that?

14           A. Yes.

15           Q. Actor Deevey, meaning Superintendent Deevey,  
16 is to take over for him; right?

17           A. It appears to be so, yes.

18           Q. Now, this is what is striking to me. There  
19 is not one single piece of paper in the record that has  
20 ever been produced by the prosecution that refers to  
21 Grodzinski being transferred before the morning of January  
22 8th, 2008 to the Northeast Region, not a solitary piece of  
23 paper. Do you concede that?

24           A. I concede that there may be no paper, but I  
25 do not concede that it was not discussed.

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1            Q.    Something else interests me. You actually  
2 spoke -- you actually spoke, you had a heart-to-heart with  
3 Chief Superintendent Grodzinski on December 13th, some 28  
4 days earlier or actually 26 days earlier, isn't that true,  
5 on December 13th, 2007?

6            A.    It may be correct, yes.

7            Q.    On December 13th, 2007, you had a chat with  
8 Chief Superintendent Grodzinski about him not getting the  
9 job of Deputy Commissioner, correct?

10          A.    Of acting, yes, or -- yes.

11          Q.    And the two of you chatted and it felt like a  
12 positive conversation, am I right?

13          A.    Yes.

14          Q.    I want to read you the account. I'm going to  
15 be brief but I'm going to read you the account of Chief  
16 Superintendent Grodzinski with respect to the meeting and I  
17 want to get your confirmation as to the accuracy of that  
18 information. Is there a transcript up on your desk? No.

19          A.    I don't see one.

20          MR. GOVER: I'm content to do it and then look on  
21 if you can give me a page number, Mr. Falconer.

22          MR. FALCONER: A brief indulgence. I apologize  
23 for this, Mr. Adjudicator. This would be July --

24          MR. GOVER: 16th, I believe.

25 BY MR. FALCONER:

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1            Q.    July 16th.  I apologize, Commissioner.  It  
2 will take me one sec.  At page 151 of the transcript, Chief  
3 Superintendent Grodzinski states the following line 8:

4            "...On the 13th of December, 2007, I had to attend a  
5 Commissioner's Committee in Mississauga, Orbiter Road.

6            I believe it's Mississauga..."

7 And then I'm skipping,

8            "...and this was subsequent to me being told that  
9 Chief Superintendent Larry Beechey was going to be the  
10 Provincial Commander of Traffic Safety..."

11 First of all, Commissioner Fantino, does this sound  
12 familiar?

13            A.  Yes, it does.

14            Q.  All right.

15            "...And I went to Commissioner's Committee that day to  
16 do a presentation.  At lunch time, the Commissioner  
17 came out and he essentially motioned.  He said, Come  
18 on, Bill, let's go for a walk..."

19 Does that sound familiar?

20            A.  Yes.

21            Q.  All right.  Now, this is on the 13th of  
22 December, 2007.  That's why I said it was 28 days before  
23 the January 8th conference call.  All right?

24            A.  Hm-hmm.

25            Q.  Line 21,

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1 "...We walked down to the end of the hall more or less  
2 and he stopped and we had a discussion about the fact  
3 that, due to a number of different factors, he had  
4 made a decision to put Chief Superintendent Beechey in  
5 charge of Traffic Services, not to take it  
6 personally..."

7 A. Yes.

8 Q. I'm at the bottom of 151,  
9 "...It was a broader consideration. There was a sense  
10 from his words that there was going to be a bit of a  
11 re-org and that was part of it, and he essentially  
12 said it's not a bad thing, Bill, to retire as a Chief.

13 At that point, I stopped the Commissioner and I said,  
14 Commissioner, with respect, we've got a pretty good  
15 thing here. We've got a great unit, good people. I  
16 joked and he and I had this joke previously or this  
17 conversation previously. I had been turned down twice  
18 by the Toronto Police Services because I didn't weigh  
19 enough. So I said I've done pretty good for a guy  
20 that got turned down by Toronto twice and he indicated  
21 he was very pleased with the work of Highway Safety,  
22 he was very pleased with my work, and I appreciated  
23 his comments. They seemed heartfelt and I appreciated  
24 the fact he was taking time to have a conversation  
25 with me about my career. It meant a lot to me..."  
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1 Is this accurate?

2            A.    Pretty well.

3            Q.    "...As we were wrapping up the conversation,  
4 I said to the Commissioner if you're happy with my  
5 work, sir, I have only one request, that's to be left  
6 where I am. I said I love what I'm doing, I've got  
7 some great people here, and if you're happy with me in  
8 the HSD, just leave me where I am..."

9 I asked him what he meant by "HSD". He said,  
10 "...Highway Safety Division, my command, sir..."

11 My next question to him was,

12 "...What was your understanding of whether he was  
13 happy or not?"

14 Answer: He had even in this conversation made it  
15 clear he was happy. We had previous conversations  
16 about my work..."

17 This is accurate?

18            A.    Pretty well.

19            Q.    "...And he indicated very positive terms.  
20 When I interviewed for the Deputy's position, he  
21 phoned me with the news that I was not successful. In  
22 that conversation, which is always a tough  
23 conversation, but he said, Bill, you're doing some  
24 great work here, keep at it. I wasn't selected to be  
25 interviewed for another Deputy's position, Provincial

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1            Commander of Corporate Support. He sent me a personal  
2            E-mail saying, Bill, don't worry about it, you're  
3            doing great work, it's not a reflection on you. The  
4            Commissioner was very good to me in terms of his  
5            communication in terms of my work and the work of  
6            Highway Safety Division.

7            Question: You have given -- did you take notes of the  
8            December 13th, 2007 meeting?

9            Yes, they were high level. They weren't made that  
10           day. They were actually made at the end of the week.

11           It was one of those things I realized was quite a  
12           significant conversation, so the purpose of capturing  
13           it was more for the accolade, so to speak. When I  
14           asked him, you know, just leave me where I am, he  
15           indicated that quite often when he has a conversation  
16           as he was having with a senior officer, he would come  
17           back a couple of days later and ask them if there is  
18           anything else that they would like or where they would  
19           like to be, and I said, Commissioner, I'm there. I  
20           said I'm there. So I really reinforced that I was  
21           happy..."

22 Now, Mr. Adjudicator has heard that Chief Superintendent  
23 Grodzinski took notes of that conversation. Do you doubt  
24 the accuracy of what he said?

25            A. Not at all.

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1            Q.    You knew on December 13th, 2007 that Chief  
2 Superintendent Grodzinski just wanted to stay where he was;  
3 right?

4            A.    Yes, he made that known.

5            Q.    I go back 28 -- I go forward 28 days to the  
6 morning of January 8th, 2007. You felt a little bit  
7 different from December 13, 28 days forward to January 8th,  
8 2008, about Chief Superintendent Grodzinski? You felt a  
9 little bit differently about him, didn't you?

10           A.    I felt different in the sense that we had  
11 pressure to ensure that we have a Chief Superintendent up  
12 in the Northeast. I had put a freeze on promotions.  
13 Something had to be done to fill that spot, and his name  
14 came up, as I mentioned earlier, as someone that had been  
15 in that area, had ties in that community, his wife came  
16 from there, and that's what factored into the decision.

17           Q.    You felt differently about him on the morning  
18 of January 8th, 2008, than you did on December 13th, 2007,  
19 am I right?

20           A.    On a professional basis, no.

21           Q.    On a personal basis?

22           A.    On a personal basis, as I stated earlier, I  
23 was disappointed.

24           Q.    On a personal basis, you felt he kept cheat  
25 notes on you; right?

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1            A. I just couldn't understand the issue of the  
2 notes in the context, and they are out of context, as I  
3 stated. The other thing, if I may, I have had to do some  
4 explaining about some of Chief Superintendent Grodzinski's  
5 own comments made by him about the marine unit, for  
6 instance, just bobbing around the lake, which so many  
7 people took offence to and I straightened that out for him,  
8 and that was post these notes. So my professional attitude  
9 and relationship with Chief Superintendent Grodzinski has  
10 not been diminished at all.

11           Q. So let me understand again. You're saying  
12 that personally you were disappointed in him; right?

13           A. Of course.

14           Q. And that's different than December 13th,  
15 2007, when personally you admired him; right?

16           A. I would say it's different, yes.

17           Q. On January 8th, 2008, in fact, from the day  
18 you went to that Kelsey's meeting to get a brown folder on  
19 Grodzinski on the previous Saturday, on January 8th you saw  
20 him as a person who made notes and held onto them for later  
21 retribution? Those were your words this morning; isn't  
22 that right?

23           A. Yes, and I believe that.

24           Q. And you saw him, this guy you liked with the  
25 stellar career, as someone who held onto notes for later

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1 retribution at you; correct?

2            A. At the organization. It wasn't about me.

3            Q. Well, sir, who makes the comment, the  
4 inflammatory comment? Who makes that comment, "Who is  
5 going to execute the disloyal one, you or me?" Who makes  
6 that comment?

7            A. Mr. Falconer, it was made in the context of  
8 other things that we were discussing and had just dealt  
9 with and needed to deal with. It wasn't directed at him or  
10 it wasn't directed at Superintendent MacDonald in the  
11 context that you're inferring.

12           Q. All I asked was who made the comment.

13           A. Well, you know that. I mean, you've asked me  
14 that 15 times.

15           Q. It was you. You've just said to me that you  
16 didn't think -- you weren't disappointed about Chief  
17 Superintendent Grodzinski as it pertained to you  
18 personally, it was about the OPP. Remember you said that?

19           A. I was concerned about the organization and  
20 how, as I indicated earlier, the misinformation, the kind  
21 of difficulty that we were dealing with in regards to  
22 Caledon Council, those were issues that were organizational  
23 in nature. They were corporate in nature.

24           Q. I don't want to cut off the witness. I think  
25 we're going in a place -- it's not his fault. He may have  
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1 misunderstood my question. We're getting close.

2            THE ADJUDICATOR: Are we?

3            MR. FALCONER: Yes.

4            THE ADJUDICATOR: Yes, all right.

5 BY MR. FALCONER:

6            Q. You saw him as a person who made notes and  
7 held onto them for later retribution. That's what you  
8 said.

9            A. Yes.

10           Q. So on the morning of January 8th, 2008, at  
11 0700 when you had to make a decision -- let me back up.  
12 You didn't actually have to make a decision? You had an  
13 actor in place by the name of Todd; right?

14           A. Yes, we did.

15           Q. A guy named Todd?

16           A. Yes, we did.

17           Q. He ultimately got the position full-time,  
18 right?

19           A. He did.

20           Q. But for some reason on the morning of January  
21 8th, 2008, a previously unscheduled meeting by tele-  
22 conference happens between you and the Deputy Commissioners  
23 where it all of a sudden becomes an imperative to shift  
24 Bill Grodzinski "now"; isn't that right?

25           MR. GOVER: With respect, it has been described

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1                    as ad hoc in the evidence.

2                    THE ADJUDICATOR:    Yes, I agree.

3 BY MR. FALCONER:

4                    Q.    Fine.    Substitute previously unscheduled to  
5 ad hoc.    It all of a sudden became an imperative to move  
6 Bill Grodzinski now; isn't that true?

7                    A.    Well, the "now" piece is something that I  
8 can't attest to.    All I'm saying to you is that I believe  
9 it was Chris Lewis that surfaced that disposition for the  
10 stated reasons, he came from that area, familiar with that  
11 area, family ties in that area, his wife from that area,  
12 and as I told you before, my understanding is that we were  
13 bringing him home, fulfilling a requirement of senior  
14 staffing level in the region, not a temporary one.    It's a  
15 huge region with a whole lot of issues, and we felt that  
16 under the circumstances it was a good fit, and I still  
17 believe it is today.

18                    Q.    Now, you testified that -- well, you've  
19 acknowledged the conversation on December 13th, 2007.    You  
20 acknowledged that conversation with Chief Superintendent  
21 Grodzinski, including your comment to him that there is no  
22 shame in retiring as a Chief; right?

23                    A.    That's correct.

24                    Q.    That's a very high-ranking position?

25                    A.    Yes, it is.

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1            Q.    It's a prestigious position?

2            A.    Yes, it is.

3            Q.    It's literally in the top three rankings of  
4 the OPP?

5            A.    Yes, it is.

6            Q.    So he would be the kind -- and he had a  
7 stellar career? He's a stellar officer; yes?

8            A.    He's done a good job, yes.

9            Q.    You called him stellar before.

10           A.    Yes.

11           Q.    You said he had a stellar career.

12           A.    Well, I'm qualifying it for you. Yes, he has  
13 done a good job.

14           Q.    And that stellar, high-ranking officer tells  
15 you on the 13th he doesn't want to move, but something  
16 happens where by the 8th of January, 2008, you're moving  
17 him. Can you account for that?

18           A.    Absolutely. Leading up to that date and  
19 leading up to that 7:00 a.m. conversation, there had been  
20 all kinds of other discussions about moving people,  
21 realigning the organization, who should move. I indicated  
22 earlier about the redundancy of some positions that were  
23 not funded. This was not done in isolation of all of those  
24 other issues that had been ongoing long before that  
25 conversation took place.

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1            Q.    But if --

2            A.    This was not -- excuse me.    This was not a  
3 one-off.    His name had come up earlier on different issues  
4 about moving, as were other chief superintendents.

5            Q.    Why didn't you tell Deputy Commissioner Lewis  
6 that Chief Superintendent Grodzinski didn't want to move?  
7 Why didn't you tell him?

8            A.    I don't understand the question.    Why didn't  
9 I tell?

10           Q.    Why didn't you relate to Deputy Commissioner  
11 Lewis that Chief Superintendent Grodzinski had told you he  
12 wanted to stay where he was?    Why didn't you tell him that?  
13 Why did you keep that to yourself?

14           A.    Because, sir, we all have likes and dislikes,  
15 and at the end of the day, the exigencies of the service  
16 also have to be factored in.    I felt that it was a good  
17 opportunity for him, as I stated earlier, and that's why I  
18 asked for I believe it was Chris Lewis and Larry Beechey to  
19 speak with him about the move, and when he didn't want to  
20 go and presented the issues that he did, backed off right  
21 away.    Nothing was forced on him.

22           Q.    You told him on December 13th, 28 days before  
23 the January 8th transfer, you told him on December 13th  
24 there was no shame in retiring as a Chief; right?

25           A.    That's right.

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1            Q.    And that's because you knew that he was at a  
2 stage where it wasn't that far removed or that  
3 inconceivable that he was going to retire; right?

4            A.    I believe he could have gone at some point in  
5 time. I don't know exactly when, but I believe the  
6 conversation came up about retirement.

7            Q.    Right. And so that's the context, you knew  
8 that this was an individual that he didn't have to go, but  
9 he was eligible to go? Yes?

10           A.    The context of that conversation, Mr.  
11 Falconer, is that even if he retired, retiring as a Chief  
12 right then and there, wasn't a bad thing, but I never -- I  
13 never suggested that he do, and I never assumed that he  
14 would.

15           Q.    Fair enough. You're agreeing with me that  
16 one of the topics of conversation was that he had this  
17 impending retirement option; right? He had an option?

18           A.    I believe we did, yes.

19           Q.    Yes.

20           THE ADJUDICATOR: I guess Superintendent Van Zant  
21 can return if he wants.

22           MR. FALCONER: He can, and I'm sorry.

23           THE ADJUDICATOR: No, it's all right.

24           MR. FALCONER: Yes. Can you tell him?

25 BY MR. FALCONER:

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1            Q. We heard from Deputy Commissioner Lewis that  
2 this position in Northeast Region, the concern about  
3 filling it was to ensure that the turnover there stopped,  
4 that there had been, I believe, five commanders in a four  
5 and a half year period. Does that sound right?

6            A. I believe that was one of the issues, yes.

7            Q. He said -- this is what he said in his  
8 statement, that there had been a series of pre-retirement  
9 commanders there over the past few years and the region was  
10 feeling the effects of that; right?

11          A. Yes.

12          Q. You have a Chief Superintendent, being  
13 Grodzinski, whom on December 13th, 2007 has told you he  
14 doesn't want to move; right? Right?

15          A. Yeah. Yes.

16          Q. You and he have discussed it in the context  
17 that he, in fact, is a pre-retirement commander; right?

18          A. Yes.

19          Q. There is not a scintilla of paper to support  
20 any decision or record or reflect any decision to move him  
21 before January 8th, 2008; right?

22          A. Mr. Falconer, one of the issues that you need  
23 to address in the context here is that bringing him back to  
24 that area was also a way for us to stabilize what had been  
25 taking place, the changes in personnel at that high level.

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1    As I stated, I thought we were bringing him home, and as  
2    such, he would have done a good job and stayed there.

3            Q.    You thought you were doing him a favour?    You  
4    thought you were helping him?

5            A.    Absolutely --

6            Q.    Right.    Just like you thought you were  
7    helping Ken MacDonald, right?

8            A.    Mr. Falconer, please.

9            Q.    The same idea, isn't it?

10          A.    Your Honour.

11          MR. FALCONER:    That's fine.    I'll withdraw that.

12            I'll move on.

13          THE ADJUDICATOR:    Yes, I don't think we have to  
14    get into that.

15 BY MR. FALCONER:

16            Q.    You thought you were bringing him home, you  
17    thought you were doing him a favour; right?

18          A.    And his wife and the family, yes.

19            Q.    Yes.    You were sort of making a decision for  
20    him, because he had told you he didn't want to go there;  
21    right?

22          A.    He didn't tell me he didn't want to go there.  
23    He indicated that he would like to stay where he was.

24            Q.    Right.

25          A.    But none of us had that luxury at that time,

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1 nor do we do it today.

2            Q. Now, moving on, not only was it despite his  
3 wishes, he was the exact category of commander you were  
4 trying to avoid? He was a pre-retirement commander; right?

5            A. Not at all, Mr. Falconer. The retirement  
6 issue was a passing comment and there is all kinds of  
7 people who are eligible for retirement that don't retire  
8 when they're eligible.

9            Q. But you knew he was eligible?

10           A. I knew that he was there, yes, or approaching  
11 it. I believe -- I believe what I know is that it would  
12 have been I think in 2009 or 2010, I forget now.

13           Q. Now, I put it to you, sir, that it's an  
14 extraordinary coincidence in timing, an extraordinary  
15 coincidence in timing, that the very morning the first  
16 order of business 0700 after you learn of the Tweedy ruling  
17 that you would have transferred him against his wishes to a  
18 position that he, in fact, wouldn't be able to solve since  
19 he was also pre-retirement. It's an extraordinary  
20 coincidence, wouldn't you agree, in timing?

21           A. Life is full of coincidences, but if you look  
22 at the issues that we discussed that day, they were all  
23 major organizational issues that needed to be addressed and  
24 he factored into that discussion when Chris Lewis brought  
25 it up.

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1            Q.   Not another Chief Superintendent was  
2 transferred that day, not another one? He was the only one  
3 that day?

4            A.   He wasn't transferred, Mr. Falconer. The  
5 decision was made to see if it could work out. He was  
6 approached by I believe Chris Lewis and Larry Beechey and  
7 it didn't work out and that was the end of it. We didn't  
8 pursue it.

9            Q.   The Deputy Commissioner called you, right?

10           A.   I believe he did, yeah. Yes, and he told me.

11           Q.   She, the Deputy --

12           A.   Oh, the Deputy Minister.

13           Q.   I apologize. It's my fault. The Deputy  
14 Minister called you, correct?

15           A.   That was days later.

16           Q.   She expressed the concern that there were  
17 appearance problems with transferring this man to North Bay  
18 while he's in the course of being a witness in these  
19 proceedings; correct?

20           A.   No, absolutely not.

21           Q.   She didn't express that concern?

22           A.   She was concerned about the information she  
23 had received that it was a forced transfer imposed upon him  
24 and that he didn't want to go and --

25           Q.   Go ahead.

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1            A.    And on the basis of that, I advised her that  
2 the decision had been reversed.

3            Q.    This is a note by Mr. Gover.    So Mr. Gover  
4 took the note of something that Deputy Commissioner Lewis  
5 said.    It's the last three lines that I would ask you to  
6 focus on.    The note that Mr. Gover took -- and you will see  
7 it says October 16th, 2008.    We're very current.    This is  
8 Mr. Gover's notes of yesterday, something Deputy  
9 Commissioner Lewis said to him before court started  
10 yesterday, and the note says,

11           "..."Deputy Minister Newman was concerned that in the  
12           middle of this case Grodzinski was being moved..."

13 Do you see that?

14           A.    I see it.

15           Q.    You were being questioned because there was a  
16 concern by your overseer that you were exercising reprisal,  
17 punishment, against a Chief Superintendent who had  
18 embarrassed you; isn't that true?

19           A.    Absolutely not, Mr. Falconer.    As I indicated  
20 to you, the concern expressed by the Deputy was that this  
21 was being imposed on the Chief Superintendent, that he  
22 didn't want to go, and she felt that we ought to rethink  
23 the situation.    By then, it was all over and done with.    We  
24 had withdrawn the offer to Chief -- and by the way, it was  
25 an offer.    It wasn't an order to move to North Bay.    It was

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1 -- and she was operating on stale-dated misinformation.

2            Q.    You say it was an offer, it wasn't an order?

3            A.    It was an offer.

4            Q.    Deputy Commissioner Lewis testified yesterday  
5 that he conveyed to Chief Superintendent Grodzinski two  
6 days after your decision -- he conveyed it on January 10th,  
7 2008 -- that the decision had been made and that he was to  
8 report the following Monday.

9            A.    It wasn't my decision, Mr. Falconer. It was  
10 the consensus of the people with whom I spoke, the Deputy  
11 Commissioners.

12           Q.    Quote,

13           "...Deputy Lewis indicated that a decision had been  
14 made to transfer me to North Bay, Northeast Region  
15 Headquarters, effective the following Monday, that  
16 this was not a discussion, the decision had been  
17 made..."

18 Now, to be fair to the evidence, Deputy Commissioner Lewis  
19 also testified yesterday that he wasn't comfortable with  
20 the words "not a discussion". He wasn't comfortable with  
21 that. He had communicated that a decision had been made,  
22 but he certainly in his mind was prepared to entertain a  
23 discussion. Now, I'm going to suggest to you, sir, when  
24 you look at Deputy Commissioner Lewis' single page note,  
25 you see the word "announce"? Do you see that word,

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1 "announce Grodzinski transfer"? Do you see it?

2            A. These are Mr. Gover's notes.

3            Q. I'm sorry, you should have the Grodzinski  
4 note in front of you, single page, if I can steal Your  
5 Honour's. Do you see the word "announce"?

6            A. Yes.

7            Q. "Announce Grodzinski now."

8            MR. GOVER: So these are the Lewis notes, and  
9 just to be clear for the record, what was  
10 referred to in the transcript was the evidence of  
11 Chief Superintendent Grodzinski.

12            MR. FALCONER: That's very fair.

13 BY MR. FALCONER:

14            Q. Do you see that note, "announce now"?

15            A. Yes.

16            Q. Deputy Commissioner Lewis testified yesterday  
17 and you testified today, basically, he was to report to his  
18 new post Monday; right?

19            A. That was the game plan, yes, and he obviously  
20 didn't want to go and we didn't force it on him.

21            Q. You knew he didn't want to go. He told you  
22 that 28 days before. This was not a revelation to you.  
23 You knew he didn't want to go when you transferred him the  
24 morning of January 8th; isn't that true?

25            A. It isn't true in the context that you

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1 presented. We -- we discussed this issue of the Northeast.  
2 I mentioned to you before that Deputy Commissioner Lewis  
3 was concerned about filling that spot. We got talking  
4 about people. His name came up. I indicated to you why he  
5 was being moved, and when he was spoken to about this, the  
6 move was rescinded or it was cancelled. So it doesn't  
7 sound like much of an order to me.

8            Q. Let's move on. Let me ask you this.

9            THE ADJUDICATOR: I was just going to suggest  
10 moving on. Like I'm looking at the clock --

11           MR. FALCONER: Five minutes, five minutes.

12           THE ADJUDICATOR: Do you think we can --

13           MR. FALCONER: About five minutes.

14           THE ADJUDICATOR: All right.

15 BY MR. FALCONER:

16           Q. I'm going to suggest to you this.

17           THE ADJUDICATOR: This note of Mr. Gover's, what  
18 am I supposed to do?

19           MR. FALCONER: That was for your purposes to see  
20 the contents of it. I don't --

21           THE ADJUDICATOR: I can't keep it, then?

22           MR. FALCONER: Yes, I would file it as the next  
23 exhibit --

24           MR. GOVER: No.

25           MR. FALCONER: -- because Deputy Commissioner

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1            Lewis did adopt it. He did adopt it in the  
2            morning yesterday, so I think it should be filed,  
3            just like we did with the others because he  
4            agreed that he said that to Mr. Gover.  
5            MR. GOVER: It's late in the day, Mr.  
6            Adjudicator. What I would suggest is that we  
7            review the transcript. I have no objection to  
8            you retaining it. It may assist you in your  
9            note-taking, but it's a note of counsel and I  
10           want to review the transcript before it becomes  
11           an exhibit just to review how Deputy Commissioner  
12           Lewis responded when it was put to him.  
13           THE ADJUDICATOR: All right. I'm going to keep  
14           it and we'll revisit it next time we come back.  
15           MR. FALCONER: Thank you.  
16           THE ADJUDICATOR: Will you both remember that?  
17           MR. FALCONER: No, I swear to you I won't.  
18           MR. GOVER: I won't, but Mr. Rees will.  
19           MR. FALCONER: I won't forget on purpose. It's  
20           just that my history isn't good and I'm not  
21           believing I'm going to be able to help.  
22 BY MR. FALCONER:  
23           Q. Commissioner Fantino, you're a very seasoned,  
24 experienced police officer. You do understand that even  
25 the appearance that one is trying to affect a potential

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1 witness' testimony is to be avoided at all costs. Do you  
2 agree with that?

3            A. Yes.

4            Q. And you knew, based on everything, including  
5 your Grodzinski package of January 5th you got in a  
6 Kelsey's, you knew that Grodzinski was going to be a  
7 witness; right?

8            A. No, I did not. Potential maybe.

9            Q. Thank you. You knew he was going to be a  
10 potential witness?

11           A. That's what all these motions were all about.

12           Q. Exactly. And then Superintendent Tweedy  
13 actually ruled that he was to testify; right? That's in  
14 his ruling?

15           A. Yes.

16           Q. Delivered the same morning that you  
17 transferred Grodzinski out; right?

18           A. I didn't transfer him. The offer was put to  
19 him, he declined it, and that was the end of it.

20           Q. I'm going to suggest to you, sir, what really  
21 happened, what really happened is first and foremost on  
22 appearance a most unfortunate appearance was created by the  
23 ill-advised timing that you would have chosen to transfer  
24 Grodzinski. Would you agree with that --

25           A. Not --

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1            Q. -- at minimum that a very unfortunate  
2 appearance was created by the ill-advised timing of that  
3 transfer?

4            A. Not at all. It was -- it was a discussion  
5 that was entertained about Grodzinski as it was with other  
6 people. He seemed to fit and that's how it came up. I  
7 didn't even have the history on his background in North Bay  
8 and his family. Chris Lewis did, apparently, and I went  
9 along with it.

10           Q. You don't accept any responsibility for poor  
11 timing when you consider the revelations that happened  
12 between the 5th of January and the 8th of January, 2008?  
13 You don't take any responsibility for the poor timing of  
14 that transfer decision?

15           A. I take responsibility, but not for the poor  
16 timing. Poor timing had nothing to do with it.

17           Q. And it wasn't poorly timed in your view, was  
18 it?

19           A. I don't believe it was. It was --

20           Q. It -- sorry.

21           MR. GOVER: Please let him finish.

22 BY MR. FALCONER:

23           Q. Sorry, I apologize.

24           A. Looking at the organizational needs and how  
25 this discussion surfaced, it was -- it was the thing to do

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1 at that time. It was believed to be the right thing to do  
2 at that time when, again, to repeat, when the issue was  
3 revisited and it was stated that, as stated, that he didn't  
4 want to go there, pulled it right back, not a problem.

5            Q. You don't take responsibility for poor  
6 timing. Do you take responsibility for creating a  
7 reasonable perception for a witness that he was being  
8 punished? Do you take responsibility for that?

9            A. Only -- only to the extent, I suppose, that I  
10 have no control over people who may be paranoid or cynical  
11 about the kinds of things that people are trying to do  
12 honestly.

13           Q. So you're saying that, to the extent Chief  
14 Superintendent Grodzinski -- not to the extent. You're  
15 saying Chief Superintendent Grodzinski's perception that  
16 you were punishing him was actually borne of paranoia and  
17 it wasn't a reasonable perception? That's what you're  
18 saying?

19           A. That's absolutely wrong, in fact.

20           Q. All right. And I've asked it in the  
21 negative, so there could be confusion in the record. In  
22 your mind, his perception was wrong, but I'm asking you do  
23 you agree with me that, given the timing of how this  
24 developed, that his perception was a reasonable one that he  
25 was being punished?

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1            A.    In the context of what appears to be a see-  
2 saw of issues involving Chief Superintendent Grodzinski, I  
3 don't think so because, as I stated earlier, if he was to  
4 be punished or if we were mean-spirited about it, he would  
5 be in North Bay now.

6            Q.    You could have done it with a stroke of a  
7 pen?

8            A.    Well, we could have done it by consensus and  
9 affected an order. We didn't do any of that.

10          Q.    Right.

11          A.    The stroke of the pen, Mr. Falconer, is a  
12 term. It's no big deal, but it's not done that way, per  
13 se. There is a process. We have dialogue, we have  
14 discussions. The deputies are involved. We look at where  
15 people have been and all those issues before people are  
16 transferred, and that's what we did with him.

17          Q.    You made a decision to move out a problem,  
18 that's what happened on the morning of January 8th, and  
19 that's why the Deputy Minister called you concerned about  
20 your actions?

21          A.    You are so wrong, absolutely wrong, in that  
22 we were fixing a problem in the Northeast with a situation  
23 and an individual that we thought was an absolute good fit  
24 for him and the organization period.

25          Q.    It's been two years, roughly two years you've  
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1 been Commissioner of the OPP. Have you ever received any  
2 other telephone call from the Deputy Minister expressing  
3 concern over a transfer ever?

4            A. I don't think I'm -- Your Honour, I don't  
5 think it's incumbent upon me to get into what discussions  
6 I've had with the Deputy Minister.

7            MR. FALCONER: Mr. Adjudicator, I want to  
8 establish that the expression of concern by the  
9 Deputy Minister was very unusual. We're going to  
10 be here another day, so we'll deal with it then.

11            I'll withdraw the question for now and address  
12 you on it on the latter day.

13 BY MR. FALCONER:

14            Q. I'm going to put it to you, sir, that if you  
15 had in any way directed your mind to the importance of the  
16 integrity of these proceedings, you would have realized  
17 that the actions you took against a Chief Superintendent  
18 who told you he wanted to stay and the way you effected  
19 those actions would have inevitably created the impression  
20 of reprisal. I put that to you, sir.

21            A. Only to someone that wouldn't reason things  
22 out. Our reasoning was solid, is solid. It was honestly  
23 motivated. It was done for all of the right reasons, and  
24 in great part, was done to bring him and his family back  
25 home.

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1            Q.    And finally, sir, I'm going to put it to you  
2 that not only was it meant to send a signal to Chief  
3 Superintendent Grodzinski about this trial of the first  
4 commissioned officers, it was intended to send a signal to  
5 any other officer that might have a mind to testify and  
6 assist these officers. It was intended to send a signal?

7            A.    It didn't stop Keith Messham from stepping  
8 forward with his own version of events. I mean, come on,  
9 Mr. Falconer. There was no such intent ever.

10          Q.    So it's your evidence that you allowed Keith  
11 Messham to come here free of any fear of prosecution or  
12 reprisal? Is that your evidence?

13          A.    Yes, I had no control over him coming here.

14          Q.    I'm going to suggest to you that, in fact,  
15 the removal or the effort to remove Chief Superintendent  
16 Grodzinski had only one obstacle that succeeded and that  
17 obstacle was the Deputy Minister. That's my suggestion to  
18 you.

19          A.    The obstacle was the Deputy Minister? She  
20 was long after the decision was made to withdraw the offer.  
21 She was irrelevant to the outcome, and as a professional  
22 courtesy, I explained all of that to her that he was not  
23 going, that he didn't want to go, we weren't going to force  
24 him, and that there were some issues with his wife, and on  
25 it goes, and we would find another solution, which we have

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1 since.

2            Q.    And the solution you found was the very  
3 officer that was already in place?    Yes?    That's the  
4 solution you found?

5            A.    After he went through process as did other  
6 people, yes.

7            Q.    Sir, there were no other people.    In fact,  
8 when you advertised for the very attractive helping hand  
9 position, the only applicant for the position as borne out  
10 in the exhibits was the acting at the time?    Nobody else  
11 applied for it?

12           A.    Well, and that's good.    Why is there a  
13 problem with that?

14           Q.    You talked about this attractive, huge  
15 opportunity.    It's a strange thing that nobody else seemed  
16 to want to avail themselves of it when you advertised it.

17           A.    Well, some people do, some people don't.

18           Q.    No one did.

19           A.    Well, that's fine.    It doesn't make the offer  
20 to transfer Chief Superintendent Grodzinski mean-spirited.

21           MR. FALCONER:    At this stage, Mr. Adjudicator,  
22 I'm going to suggest we break.    I anticipate needing no  
23 more than a half day with Commissioner Fantino.    My  
24 respectful suggestion is we book a day to protect all of  
25 us, whether it's re-examination or anything else, but from  
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1 my perspective, those are the time allocations.

2 THE ADJUDICATOR: So have we got a date?

3 MR. GOVER: What I would suggest is that we take  
4 quite literally a five minute break.

5 THE ADJUDICATOR: All right.

6 MR. GOVER: That we excuse Commissioner Fantino,  
7 and that before I forget, I actually make good on my  
8 promise to provide you with a copy of the map, sir, which I  
9 think was Exhibit 51.

10 THE ADJUDICATOR: Great. 51, that's it.

11 MR. GOVER: And that's the smallest size we could  
12 make it and still make it legible.

13 THE ADJUDICATOR: Thank you.

14 MR. GOVER: So if we could take -- and I'm  
15 sincere in this -- a five minute break, so we're back in  
16 here at approximately 5:33 p.m. I suggest that we then  
17 canvass continuation dates, and we have been going now for  
18 almost three and a half hours.

19 THE ADJUDICATOR: We have.

20 MR. GOVER: A new record.

21 THE ADJUDICATOR: We've been working hard.

22 MR. FALCONER: We all work hard. Now, before we  
23 -- I don't know if Mr. Adjudicator is rising because --

24 THE ADJUDICATOR: Yes, so Commissioner, you  
25 realize that you are still under cross-examination by Mr.

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1 Falconer when you come back. So the important thing is do  
2 not discuss this matter with anyone during the period of  
3 time until you're back. Do you understand that?

4 THE WITNESS: Your Honour, I find that very  
5 strange because today it's all over the news anyway what  
6 Chris Lewis said.

7 THE ADJUDICATOR: Well --

8 THE WITNESS: You know --

9 THE ADJUDICATOR: I know, but I mean, I've got  
10 this job to do.

11 THE WITNESS: I appreciate that.

12 THE ADJUDICATOR: So I just have to put this on  
13 the record.

14 THE WITNESS: I appreciate that. I appreciate  
15 that, Your Honour, and I will not, but I also want it on  
16 the record that whatever sanctions you ordered, it all  
17 failed because the media obviously conveyed everything. So  
18 there you go.

19 THE ADJUDICATOR: I know you will comply.

20 THE WITNESS: I will. I will.

21 THE ADJUDICATOR: All right. So let's have a  
22 break, then.

23 --- BRIEF RECESS

24 THE ADJUDICATOR: Yes, gentlemen. Thank you very  
25 much, Mr. Adjudicator. I have canvassed the availability

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1 of the hearing room and the Commissioner's availability and  
2 the Commissioner will be out of the country on November  
3 10th which had been proposed, and what we have is the first  
4 available date after November 10th when the hearing room is  
5 available and when the Commissioner is available, and that  
6 is a date when I'm going to be available, as well, is  
7 Monday, December 1st, and I would ask that that be set as  
8 our date to conclude the evidence.

9           MR. FALCONER: And I'm just looking at the 1st  
10 but something flows from it. Now, I mean no disrespect to  
11 Commissioner Fantino. I have no problem with him being in  
12 the room while we discuss some dates, but there are some  
13 difficulties that make me think that it's probably more  
14 appropriate that he wait outside now that his dates have  
15 been delivered to you, Mr. Adjudicator.

16           THE ADJUDICATOR: So no reason to keep the  
17 Commissioner any longer here?

18           MR. FALCONER: There is, there is.

19           THE ADJUDICATOR: There is?

20           MR. FALCONER: Yes, I can address you about it.

21           THE ADJUDICATOR: Like December 1st is okay with  
22 me.

23           MR. FALCONER: Can I speak to you in the absence  
24 of the witness, please?

25           THE ADJUDICATOR: Commissioner.

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1 --- Witness leave the hearing room at 5:50 p.m.

2           MR. FALCONER: The reason you see me keep hitting  
3 my phone is I'm trying to find this calendar. It doesn't  
4 always pay to have a gizmo to give you your dates. We have  
5 now a number of problems. I understand -- one moment,  
6 please. So from December 1st to December 5th Inspector  
7 Jevons is in Phoenix on a course. The flights have been  
8 booked. That's the first problem, but the second problem,  
9 frankly, sort of trumps it. I think it's way too late.

10           THE ADJUDICATOR: Too late?

11           MR. FALCONER: Yes, December 1st is too late.  
12 We're right now at October 16th. I'm in the middle of a  
13 cross-examination and what has been proposed is to put the  
14 cross-examination over a month and a half. That is too  
15 late. There is no issue about a hearing room availability.  
16 I heard Mr. Gover say the hearing room is available  
17 December 1st, but the hearing room is actually available  
18 earlier and I'm prepared to move things.

19           You know, I foresaw this problem. Getting a  
20 Commissioner to move around his schedule is not easy and no  
21 one -- well, you listened, but you can't control it. Mr.  
22 Gover simply did not give it a lot of weight. So I say,  
23 with great respect, the Commissioner is going to have to  
24 choose one of his commitments to waive.

25           He's a witness under summons in the middle of a  
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1 cross-examination and putting it over a month and a half, a  
2 case that has been horribly delayed -- you've commented in  
3 rulings on this already -- it's not appropriate, especially  
4 if we're trying to end this by the end of the year. It  
5 doesn't work.

6 THE ADJUDICATOR: Like do you think another break  
7 would help? I kind of agree with Mr. -- and I know Mr.  
8 Gover wants to move it along, too. He has been saying that  
9 ever since we started, but it never really hit me that it  
10 was a month and a half. I guess I was looking at the  
11 November calendar, because it seems to me if we do go to  
12 December, we're not going to finish this year and you're  
13 not going to catch me until maybe next June.

14 MR. FALCONER: And the officers have this hanging  
15 over their heads and my cross-examination is down for a  
16 month and a half. It's just not...

17 THE ADJUDICATOR: What I'm going to do -- yes,  
18 any other suggestion, Mr. Gover?

19 MR. GOVER: My difficulty is the availability of  
20 the Commissioner and I have explained to you, as well, I am  
21 due to start a trial on Monday.

22 THE ADJUDICATOR: Yes.

23 MR. GOVER: And what I suggest we do, Mr.  
24 Adjudicator, and I realize that December 1st is sometime  
25 distant, I do remind you, though, that the evidence of  
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1 Superintendent MacLachlan was adjourned for a period of  
2 about two months and that's not entirely desirable and I'm  
3 not suggesting that that should be the norm, but we are  
4 dealing here with the Commissioner of the Force who is  
5 extremely busy who has a calendar that is established far  
6 in advance and one that involves him being away from this  
7 location for extended periods. And in my respectful  
8 submission, what we ought to do is to set the date of  
9 December 1st and if in the interim some dates free up, what  
10 I suggest and I can give you my undertaking, sir, on a very  
11 best efforts basis, if I become available and if we learn  
12 that the Commissioner's schedule changes -- and we're at a  
13 disadvantage, sir, because the Commissioner's schedule  
14 isn't really maintained by the Commissioner, and it's after  
15 regular business hours.

16           What I'm suggesting is we set the date of  
17 December 1st and I give you my undertaking that, in the  
18 event that we're able to proceed earlier, I will canvass  
19 that immediately with not only the Commissioner's office  
20 and Mr. Falconer, but also with the Professional Standards  
21 Bureau office so that we can secure the premises and with  
22 all appropriate involvement of Mr. Falconer, with you, as  
23 well, sir. In my view, that's the best we can do at this  
24 late hour at this date. Thank you.

25           THE ADJUDICATOR: I don't like arguing about  
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1 these things.

2 MR. FALCONER: Well, I don't either, but I have  
3 an obligation to my clients.

4 THE ADJUDICATOR: I know you do.

5 MR. FALCONER: And I'm now --

6 THE ADJUDICATOR: And I have an obligation to a  
7 lot of other people.

8 MR. FALCONER: That's fair.

9 THE ADJUDICATOR: Mr. Gover, myself, you, the  
10 Commissioner, the subject officers. So I don't want to  
11 lower the hammer and say, look, this is the date whether  
12 you like it or not. I don't want to do that.

13 MR. FALCONER: And I don't want to put you in  
14 that position.

15 THE ADJUDICATOR: I'm not sure I have the  
16 authority to do it, anyway.

17 MR. FALCONER: Well, I actually think you do, but  
18 I'm not asking you to do it, so it doesn't matter. Here is  
19 my suggestion, that you don't lower a hammer, but you lower  
20 sort of a sponge bat, and the sponge bat would be two  
21 weeks, pick a half day, because if Mr. Gover tells us how  
22 long he'll be in re-exam right now, I may be willing to  
23 agree on us both being finished in a half day, so a half  
24 day block. In other words, can I ask Mr. Gover is he  
25 planning on being more than half an hour in re-exam?

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1           MR. GOVER: I don't believe so, and perhaps while  
2 I'm on my feet, I didn't mean in that submission I just  
3 made to disentitle Inspector Jevons to be present at the  
4 hearing. If she is unavailable on December 1st, then I  
5 would recommend a date when she is available. It would  
6 have to be after December 1st, though, and the next date  
7 would be December 9th, sir. I feel obligated to tell you  
8 that.

9           MR. FALCONER: Right, but let's back up. I call  
10 it a sponge bat. I'm saying you are free, I say with  
11 respect, given the context of the motion that includes a  
12 delay motion before you right now, faced with a witness who  
13 shouldn't be in this position -- like all of the warning in  
14 the world was given and they decided to go this way anyway.  
15 So we shouldn't be in this position. It is not your fault,  
16 Mr. Adjudicator, and it's not my clients' fault. It's the  
17 decision on how they called the evidence, with warning.

18           So faced with the delay motion, you are entitled  
19 to say, well, I want a half day from the Commissioner over  
20 the next few weeks, I'm not going to pick which half day,  
21 but I want one, and by getting one, I protect the process.  
22 Now, if the Commissioner doesn't want -- who is currently  
23 under oath and under summons -- doesn't want to give a half  
24 day, then just give up the proceeding. You know, really,  
25 enough is enough. We are into December. We have no

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1 prospect of finishing this case in any reasonable time.

2           Now, I am saying pick the half day and I will  
3 move my schedule to accommodate it, no matter what I've got  
4 on, but I say that that's a fair balance because to do it  
5 any other way, to lose a month and a half, is unacceptable.  
6 And in putting over Superintendent MacLachlan, so we're  
7 clear, those were the summer months when we were down.  
8 We're not in the summer any more.

9           We're not going to be down for the fall. That  
10 was not the plan. So my submission is, is it worth the  
11 candle. If it's not, if the case isn't worth the candle  
12 and the Commissioner doesn't have to come back, just  
13 withdraw the charges. If it's worth the candle, find a  
14 half day in the next two weeks because we have to go on  
15 with the hearing.

16           MR. GOVER: Well, Mr. Adjudicator, that sounds  
17 like a hammer to me, and I've given you my undertaking and  
18 I've indicated that it's not my desire to proceed in the  
19 absence of either of the subject officers. I appreciate  
20 that there is an inherent interest in proceeding in a  
21 timely way. I have indicated my own predicament and I've  
22 indicated the Commissioner's availability. I suggest we  
23 set the date so that it's protected December 9th, and I've  
24 given you, sir, my undertaking which is not given lightly  
25 that, in the event that we can proceed in the interim, that

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1 I will notify parties in the appropriate fashion and do my  
2 best to secure the ability for us all to proceed at a time  
3 that's mutually convenient.

4           MR. FALCONER: I am advising that Inspector  
5 Jevons is going to make inquiries to see how she can be  
6 available on the 1st, number one. Number two, more  
7 importantly, I am saying for the record that this will be  
8 part of my stay application if this is delayed for a month  
9 and a half. I am not agreeing to this delay.

10           It's an unreasonable delay. It's too much. It's  
11 too much. This is, in essence, spiralling out of control.  
12 The cross-examination didn't have to go this way. It was  
13 all predictable. So I really want to emphasize this is  
14 collapsing under its own weight as a proceeding and I  
15 closed my case.

16           All I'm looking for is a half day out of the  
17 Commissioner and I got Mr. Gover's undertaking but it  
18 doesn't cure the delay. It doesn't cure it at all, and  
19 Inspector Jevons will make inquiries so the first available  
20 date that is presented to the officers that they are there.  
21 I am putting Mr. Gover on notice that I'm relying on this  
22 as a delay argument and I'm saying that the prejudice  
23 putting a cross-examination over like this is substantial.

24           This is probably the most important witness in  
25 the hearing. I'm going to be put in the position of

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1 waiting a month and a half to return to his evidence? This  
2 is -- this is -- with great respect, it's a bit on the  
3 extreme side.

4 THE ADJUDICATOR: Well, I don't want to hear from  
5 counsel any more. What I'm going to do is I'm going to  
6 have another break. I'm going to tell you right now that  
7 sometime between now and the 12th of November I want at  
8 least a half a day in this room, and if you gentlemen can't  
9 get that across to your witnesses, then I'm going to name a  
10 date and see who shows up. We just can't have this thing  
11 go on and on and on.

12 So 12th of November. I'm going to break. Do  
13 what you can. Use a hammer if you have to, but when I come  
14 back and if you haven't come up with a date, either the  
15 12th or before, I'm going to set a date myself and let the  
16 chips fall. Otherwise, we can sit here and argue all  
17 night. Now, there was some reason you wanted the  
18 Commissioner to stay. I mean, is there...

19 MR. FALCONER: Yes, because he might be able --  
20 because of this discussion.

21 THE ADJUDICATOR: No, but as a witness, you don't  
22 need him as a witness.

23 MR. FALCONER: That's right, that's right.

24 THE ADJUDICATOR: So he doesn't have to sit in  
25 here while we're --

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1 MR. FALCONER: That's right. I didn't want him  
2 to, actually.

3 THE ADJUDICATOR: No, all right. So you've heard  
4 what I have had to say. Do what you can. If not, I'm  
5 quite capable of doing it.

6 --- Upon recessing at 6:05 p.m.

7 --- Upon resuming at 6:15 p.m.

8 MR. GOVER: Mr. Adjudicator, we have looked into  
9 this issue, and first of all, I want to reiterate the offer  
10 of Saturdays and I know that tomorrow is unavailable for  
11 Mr. Falconer but --

12 THE ADJUDICATOR: And me. I'm unavailable  
13 tomorrow.

14 MR. GOVER: But I do offer October 25th and  
15 November 1st in that regard, and as for a week day before  
16 November 12th, now I've indicated that I'm starting a trial  
17 on Monday that is November -- pardon me, October 20th that  
18 is meant to run three to four weeks. In the circumstances,  
19 and although this will cause some difficulty elsewhere, I  
20 am willing to set the date of November 5th, 2008, for a  
21 continuation. I don't do that happily. I understand that  
22 Mr. Falconer is available and I reiterate that I'm willing  
23 to sit either of two Saturdays beforehand and that I have  
24 an obligation to the Superior Court in Toronto on November  
25 5th but if that's what is required in these circumstances,  
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1 I will comply.

2 THE ADJUDICATOR: Well, just for the record, I  
3 don't sit on Saturday. I don't think any court does that  
4 any more. Maybe they did in the past, but I can tell you  
5 I'm not sitting on a Saturday. You've got to have some  
6 life, gentlemen, other than just work, work, work, and I  
7 say that to both you gentlemen. You work so hard. There  
8 is more to life than just work, work, work. So I'm not  
9 sitting on Saturday.

10 MR. FALCONER: Can I take that as a ruling?

11 MR. GOVER: You certainly can.

12 MR. FALCONER: Thank you. I may use it.

13 THE ADJUDICATOR: Now, November 5?

14 MR. FALCONER: That's it.

15 THE ADJUDICATOR: All right. Thanks, gentlemen,  
16 for making the effort you have. So on November 5 we'll  
17 come back. 10:00?

18 MR. GOVER: Yes, sir, and may I suggest that we  
19 set a date for argument beyond that?

20 THE ADJUDICATOR: I'd like to do that.

21 MR. GOVER: And of course, we're not dependent  
22 upon the Commissioner for evidence -- for the Commissioner  
23 for availability, and I suggest a single day, and the dates  
24 that I have, I do have -- I expect to be free on November  
25 10th and I would suggest that we protect that date, and

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1 beyond that, we are over to -- and I'm taking into account  
2 availability of others, but beyond that, I believe we're  
3 over to December. So I would suggest we set November 5th  
4 and 10th at this point, please, sir.

5 THE ADJUDICATOR: What do you say, Mr. --

6 MR. FALCONER: That's fine.

7 THE ADJUDICATOR: Great.

8 MR. FALCONER: That's fine.

9 THE ADJUDICATOR: That's great. So we've got  
10 November 5 we're coming back to complete the cross-  
11 examination and re-examination of the Commissioner. Do you  
12 know whether there is going to be any other evidence  
13 called?

14 MR. GOVER: I've indicated that I've considered  
15 calling some brief evidence, and I understand that Mr.  
16 Falconer is considering whether he may wish to call reply  
17 evidence. He has indicated that he wishes us to notify  
18 individuals about that prospect. I think we both expect  
19 the evidence would be completed on November 5th either in  
20 the event of no further evidence or with some additional  
21 evidence either from the prosecution or the subject  
22 officers.

23 MR. FALCONER: That's right.

24 THE ADJUDICATOR: You're of that...

25 MR. FALCONER: Yes, I am.

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1 THE ADJUDICATOR: All right.

2 MR. FALCONER: Now, the only other thing that I  
3 am concerned about is the issue of submissions. If we're  
4 looking at making submissions on November 10th, then we  
5 probably should have some brief discussion, but I guess Mr.  
6 Gover and I can do it, about written submissions. I don't  
7 want the circumstance to occur that we sit on each other's  
8 written submissions until the last day and I get a 120 page  
9 submission from Stockwood LLP retained by the Commissioner  
10 fully resourced, versus little old us.

11 So I'm concerned that this not get out of  
12 control. So if we want to do written submissions, we can  
13 talk about doing them. There should be a page limit on  
14 them. We should talk about when they should be exchanged,  
15 et cetera. Mr. Gover and I can do that. I don't want to  
16 get into how many juniors can we devote and how many trees  
17 can we get cut down.

18 THE ADJUDICATOR: We had submissions before,  
19 didn't we? It seemed to work pretty good, and I think you  
20 gentlemen worked it out pretty well between yourselves.

21 MR. FALCONER: That's right. That's fine.

22 THE ADJUDICATOR: Like you both seem to be quite  
23 congenial that way in working together and working out  
24 these little problems. So we're going to be here on  
25 November 5 for a continuation of the cross-examination of  
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1 the Commissioner and maybe for re-examine and maybe other  
2 brief evidence, and then we're going to set aside November  
3 10th.

4 MR. GOVER: That's correct, sir.

5 THE ADJUDICATOR: For argument.

6 MR. FALCONER: And on November 5, the time line I  
7 would expect would be 10:00 till 12:30 complete cross-  
8 examination; 12:30 to 1:00 o'clock re-examination. That's  
9 in order to convey to Mr. Gover the half hour is real, and  
10 my two and a half hours is real. It's all real. We finish  
11 the Commissioner by 1:00 o'clock.

12 THE ADJUDICATOR: I would think we could, yes.

13 All right. So that's all we have to do today?

14 MR. GOVER: It is. We promise. Thank you, sir.

15 THE ADJUDICATOR: Thank you, gentlemen.

16 MR. GOVER: Thank you, sir.

17 --- Hearing adjourned at 6:20 p.m.

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October 17, 2008

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1 THIS IS TO CERTIFY that the  
2 foregoing is a true and accurate  
3 transcription of my recordings  
4 (my notes), to the best of my  
5 skill and ability.

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9

10 .....

11 Beryl Capicciotti  
12 Certified Court Reporter,  
13 a Commissioner, etc., Province  
14 of Ontario, for the purpose of  
15 oral examinations conducted out  
16 of court. Expires November 7, 2009.

17

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